APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-5317

VANESSA HENDERSON, on behalf of herself and all other persons similarly situated,
Appellant,

v.

ANTHONY MORRONE, individually and as Director of the Section 8 Program of the Philadelphia Authority; THOMAS J. KELLY, JR., individually and as Executive Director of the Philadelphia Housing Authority; THOMAS MCINTOSH, individually and as Chairman of the Board of Directors of the Philadelphia Housing Authority; HARRY SEWELL; HERMINE HART; CARMELITA THILL; DANTE MATTIONI, Individually and as members of the Board of Directors of the Philadelphia Housing Authority; PHILADELPHIA HOUSING AUTHORITY.

Vanessa Henderson and the certified class whom she represents,
Appellants.

On Appeal from the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civil No. 79-cv-04190)
District Judge: Honorable Clifford Scott Green
Submitted Under Third Circuit LAR 34.1(a)
Wednesday, December 13, 2006

Before FISHER, CHAGARES and GREENBERG, *Circuit Judges*.

(Filed January 25, 2007)

OPINION OF THE COURT

CHAGARES, *Circuit Judge.*

Appellant Vanessa Henderson, on behalf of herself and others similarly situated, appeals from an order granting the Philadelphia Housing Authority's ("PHA's") motion to vacate a consent decree. The District Court determined that vacatur was proper because the "purpose of the consent decree ha[d] been satisfied." Because we disagree with the District Court's construction of the decree, we will reverse and remand.

I.

In 1979, Vanessa Henderson was a low-income tenant receiving a rent subsidy from the PHA as part of the federal Section 8 assistance program.[1] In October of that year, the PHA sent Henderson a letter stating that, effective immediately, it was terminating her housing-assistance payments. The letter asserted that Henderson had misrepresented her family income and composition. Henderson responded by filing a class-action complaint in the United States District Court for the Eastern District of Pennsylvania. She contended that the PHA's failure to provide pretermination notice and an opportunity to be heard deprived her (and others similarly situated) of the process they were constitutionally due. *See* U.S. Const. amend. XIV, § 1.

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[1] "The federal section 8 rental assistance program was established under the United States Housing Act of 1937, 42 U.S.C. § 1437 *et seq.*, and provides rent subsidies for low- and moderate-income participants so that they can afford to lease privately owned housing units." *Turner v. Crawford Square Apartments III, L.P.*, 449 F.3d 542, 544 n. 4 (3d Cir.2006).

Protracted settlement negotiations followed. By July 1982, the parties still had not reached an agreement, and the case remained pending in the District Court. Then, on July 26, the U.S. Department of Housing and Urban Development ("HUD") released proposed regulations dealing with pretermination process for recipients of Section 8 assistance. *See Section 8 Housing Assistance Payments Programs-Existing Housing*, 47 Fed.Reg. 32169 (July 26, 1982). The notice and hearing requirements described in the proposed regulations were substantially similar to those sought by Henderson's complaint.

Five months later, with the proposed regulations still pending, the parties filed a settlement stipulation in the District Court. The introductory portion of the agreement stated that plaintiffs had brought suit to challenge "the defendants' failure to provide [them] . . . with notice and an opportunity to be heard prior to the termination" of Section 8 assistance. Appendix ("App.") 17. The PHA, for its part, denied any deprivation of the plaintiffs' rights, but it agreed to the stipulation "in the interest of avoiding litigation." App. 18.

The stipulation stated that the PHA could terminate benefits only for good cause, and it provided for 30-days advance written notice of the termination. The notice had to inform the tenant of the reasons for the PHA's decision, the tenant's right to request an informal hearing within 10 days, and the tenant's right to be represented by counsel at the hearing. Upon receipt of a hearing request, the PHA had to provide the tenant with a written explanation of the hearing procedures. The tenant also had the right to inspect and copy all relevant PHA documents. At the hearing itself, the tenant could examine evidence, question adverse witnesses, and present testimony in her favor. While the hearing officer could be a PHA employee, the employee could not "be involved in the day to day administration of the [Section 8] program." App. 20. Following the hearing, the hearing officer was

required to render a written decision stating "the legal and evidentiary" basis for the determination. App. 19. Tenants would have 30 days to appeal from an adverse ruling.

At the time of the agreement, the parties obviously were aware of the looming possibility that the proposed HUD regulations would become final regulations. Paragraph 13 of the stipulation explicitly addressed that contingency:

> Should [HUD] promulgate regulations which require PHA to perform acts which are inconsistent with this Stipulation or which prohibit PHA from performing acts consistent with this Stipulation, such regulations shall govern. In the event that such regulations are promulgated, either party shall file an appropriate petition to modify this decree. This provision shall not be construed as a waiver of either party's right to challenge the validity of such regulations in an appropriate forum.

App. 21.

The District Court approved the stipulation in April of 1983 and entered it as an enforceable order of the court ("the consent decree").

The next year, HUD's proposed regulations (with some revisions) became final regulations. *See Section 8 Housing Assistance Payments Program; Existing Housing*, 49 Fed.Reg. 12215 (March 29, 1984).[2] The HUD regulations are in many ways identical to the protections provided by the consent decree. Housing authorities must provide tenants with notice of the reason for the proposed termination, notice of the right to an informal hearing, and notice of the deadline for requesting a hearing. *See* 24 C.F.R. § 982.555(c)(2)(A). Tenants also have rights to discovery, to legal representation at their own expense, and to present evidence and question witnesses at

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[2] From time to time, HUD has amended these regulations. *See, e.g.*, 24 C.F.R. § 982.555(e)(2) (providing limited rights to prehearing discovery).

their hearings. *See* 24 C.F.R. §§ 982.555(e)(2)(i), (e)(3), (e)(5). The hearing officer must be uninvolved in the decision under review, and must state the reasons for the decision. *See* 24 C.F.R. §§ 982.555 (e)(4), (e)(6).

But despite these broad similarities, there are some differences. First, while the consent decree requires 30-days notice prior to termination, the regulations do not set out a specific number of days. *See* 24 C.F.R. § 982.555(c)(2). Second, although both the decree and the regulations provide a right to counsel at the tenant's own expense, only the decree requires that notice of this right be provided in the initial notice of intent to terminate benefits. Third, the decree mandates at least 10-days notice of the hearing date, while the regulations leave the amount of notice to the housing authority's discretion. Fourth, only the decree requires the PHA, upon receipt of a hearing request, to "give the tenant a written explanation of the hearing procedure." Fifth, the consent decree requires hearing officers to "state the legal and evidentiary grounds for the decision." The regulations, on the other hand, require only a brief statement of "the reasons for the decision." 24 C.F.R. § 982.555(e)(6). Sixth, the consent decree states that persons "involved in the day to day administration of the [Section 8] program" may not be hearing officers, but the HUD regulations are not so broad. A person involved in day-to-day administration (or anyone else) can serve as a hearing officer under the regulations so long as he or she is not the "person who made or approved the decision under review or a subordinate of this person." 24 C.F.R. § 982.555(e)(4)(i). And seventh, the decree requires notice of a right to appeal within 30 days, and allows tenants to "petition for clarification" of a "vague or ambiguous decision." The regulations contain no such rights.

After HUD issued its final regulations in March of 1984, neither party attempted to modify the decree, no one ever brought contempt or enforcement proceedings, and it appears

that the PHA continued to perform its obligations under the decree. In fact, for 21 years not a single docket entry was added in the District Court. Then, like a bolt out of the blue, the PHA moved to vacate the consent decree in November of 2004 "based upon significant changes in the law." App. 25. The "significant changes" it relied on were the 1984 HUD regulations.

After hearing oral argument, the District Court vacated the decree. This appeal followed.

II.

Generally speaking, we review an order modifying a consent decree pursuant to Fed.R.Civ.P. 60(b) for abuse of discretion. *See Holland v. N.J. Dep't of Corr.*, 246 F.3d 267, 281 (3d Cir.2001). Nonetheless, to the extent the District Court's order turned on its construction of the decree, we exercise plenary review. *Id.* at 277 ("This Court . . . has held many times that a district court's construction and interpretation of a consent decree is subject to straightforward plenary or de novo review."). If the District Court misconstrued the decree, its legal error necessarily constitutes an abuse of discretion. *See Coltec Industries, Inc. v. Hobgood*, 280 F.3d 262, 269 n. 8 (3d Cir.2002).

A consent decree entered on a "stipulation of the parties has the characteristics of a contract, [and] contract principles govern its construction." *McDowell v. Philadelphia Housing Authority*, 423 F.3d 233, 238 (3d Cir.2005). "One of these principles is that an unambiguous agreement should be enforced according to its terms." *Id.*

Here, the District Court's sole basis for vacating the consent decree was its determination that the decree's "purpose ha[d] been satisfied." Specifically, the court construed Paragraph 13 to establish that the parties intended the decree as no more than a temporary stopgap to "provide due process to families receiving benefits under section 8 housing until HUD regulations were promulgated." Since HUD had indeed prom-

ulgated regulations in 1984, the agreement's purpose had been fulfilled and vacatur was appropriate.

We cannot agree with that construction of the consent decree. If the parties had intended for their bargain to become inoperative once HUD promulgated final regulations, they certainly could have said so. But as it stands, Paragraph 13 recognizes the possibility of final HUD regulations, and proceeds to state only two limited situations in which they "shall govern": (1) if they "require PHA to perform acts which are inconsistent with" the stipulation, and (2) if they "prohibit PHA from performing acts consistent with" the stipulation. App. 21. The next sentence reads: "In the event that *such* regulations are promulgated, either party shall file an appropriate petition to modify this decree." *Id.* (emphasis added). The phrase "such regulations" plainly refers back to the two types of regulations described in the previous sentence. By stating these two limited situations in which the HUD regulations would "govern," the agreement expresses the parties' intent to be governed by their bargain with respect to any other differences between the two. *Cf. Plumbers & Steamfitters Local 150 Pension Fund v. Vertex Constr. Co.*, 932 F.2d 1443, 1449 (11th Cir.1991) ("The doctrine of *expressio unius est exclusio alterius* instructs that when certain matters are mentioned in a contract, other similar matters not mentioned were intended to be excluded.").

The PHA attempts to avoid this straightforward reading of Paragraph 13 by relying on this statement from the consent decree's introductory paragraph: "Plaintiffs have commenced a civil class action seeking [relief for] the defendants' failure to provide tenants under the Section 8 Housing Assistance [Program] with notice and an opportunity to be heard prior to the termination of the tenants from participation in the Program." App. 17. The PHA reads this sentence to "clearly indicate[ ] that the purpose of the Consent Decree was to fill the void of no regulations and no notice and hearing procedures, not to obtain particular terms and procedures for the

notice and hearing." PHA Brief at 30-31. We disagree for two reasons. First, the quoted sentence states the plaintiffs' purpose for "commenc[ing] a class action"; it does not state their purpose for entering into a stipulation. Second, this generalized statement of purpose does not purport to nullify the plain and specific terms of Paragraph 13.

We therefore construe the consent decree to mean what it says: HUD's final regulations trump the parties' bargain only when they "require PHA to perform acts which are inconsistent with" the stipulation, and when they "prohibit PHA from performing acts consistent with" the stipulation. App. 21; *see McDowell*, 423 F.3d at 238. Because the consent decree simply provides greater and more specific protections for tenants, the HUD regulations do neither of these things. For example, the HUD regulations do not require the PHA to inform tenants of their right to counsel in the initial notice of intent to terminate benefits, but they certainly do not forbid it. The HUD regulations may not mandate that the PHA provide "a written explanation of the hearing procedure," but they do not prevent the PHA from doing so. The regulations require only a brief statement of "the reasons for the decision," 24 C.F.R. § 982.555(e)(6), but they do not prohibit the hearing officer from providing a more detailed explanation of the decision's "legal and evidentiary" basis. And although the regulations do not mandate notice of rights to appeal or to "petition for clarification," the PHA is free to do so consistent with the regulations. In short, nothing in the HUD regulations requires an act inconsistent with the consent decree, and nothing in the HUD regulations forbids an act consistent with the consent decree. Accordingly, it was error to conclude that the promulgation of HUD regulations satisfied the purpose of the agreement.

III.

Independent of the District Court's reasons, the PHA also argues that vacatur is appropriate because "it is no longer

equitable that the judgment should have prospective application." Fed.R.Civ.P. 60(b). The Supreme Court has held that "a party seeking modification of a consent decree bears the burden of establishing that a significant change in circumstances warrants revision of the decree." *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 383 (1992). This burden can be met by "showing a significant change either in factual conditions or in law." *Id.* at 384. "Ordinarily, . . . modification should not be granted where a party relies upon events that actually were anticipated at the time it entered into a decree." *Id.* at 385; *see also Building & Construction Trades Council of Philadelphia v. NLRB*, 64 F.3d 880, 888 (3d Cir.1995) ("Central to the court's consideration will be whether the modification is sought because changed conditions unforeseen by the parties have made compliance substantially more onerous or have made the decree unworkable.")

The PHA argues that HUD's final regulations constituted a significant change in the law. We have no doubt that they were, but the fact remains that the parties "actually . . . anticipated" the promulgation of HUD regulations at the time of their agreement. *See Rufo*, 502 U.S. at 383. Their agreement expressly states the two circumstances in which the HUD regulations control, and (as we have explained) neither one is applicable.[3] In light of the consent decree's

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[3] Notwithstanding the parties' anticipation of final HUD regulations, the PHA views our dictum in *Brown v. Philadelphia Housing Authority*, 350 F.3d 338 (3d Cir.2003), as controlling in this case. In Brown, we held that "the case was moot and that we lacked subject matter jurisdiction," but nonetheless offered "some guidance . . . to the bench and bar pertaining to the test for determining when a court ordered decree should be set aside as having lost its utility." *Id.* at 448 n. 6. We stated that "there need not be a conflict" between a consent decree and a subsequent change in the law. Rather, "a significant change with no attendant conflict constitutes sufficient grounds for vacatur." *Id.* Our dictum in *Brown* was quite true, but quite inapposite here. In *Brown*, the parties' agreement had not explicitly anticipated the change in law, nor did it provide for the limited

own terms, the most equitable result is to hold the parties to their bargain.

IV.

We will reverse the District Court's order and remand for further proceedings consistent with this opinion.

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situations in which the contemplated change would govern. Moreover, in Brown the relevant changes in law "gave broader and more comprehensive protection to PHA residents than had been available under the Consent Decree," and as a result "the Consent Decree no longer had force or utility." *Id.* The Henderson decree, on the other hand, provides greater protections than the HUD regulations and remains useful for tenants on Section 8 assistance. As a result, *Brown* provides no help to the PHA.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Filed NOV. 8, 2005]

Civil Action No. 79-4190

VANESSA HENDERSON, on behalf of herself and all other persons similarly situated

Plaintiff,

v.

Anthony Morrone et al.,

Defendant.

ORDER

Presently pending is Philadelphia Housing Authority's (PHA) Motion to Vacate Consent Decree and Plaintiff's Answer to Defendant PHA's Motion to Vacate Consent Decree. AND NOW this 7th day of November 2005, upon consideration of parties' pleadings and memoranda, IT IS HEREBY ORDERED that Defendant's Motion to Vacate Consent Decree will be GRANTED.

The consent decree states, in paragraph thirteen (13), that in the event "the United States Department of Housing and Urban Development (HUD) promulgate regulations which require PHA to perform acts which are inconsistent with [the] Stipulation or which prohibit PHA from performing acts consistent with this Stipulation, such regulations shall govern." In the present case, unchallenged regulations have been promulgated that provide for notice, hearings and due process safeguards for Section 8 participants. These regulations are consistent with the consent decree designed by the parties to provide due process to Section 8 participants. As required by

the consent decree, the regulations have not been challenged and appear to govern the process.

In the event the purpose of a consent decree has been satisfied, the consent decree may be vacated.[1] Paragraph 13, of the consent decree, makes clear that the purpose of the consent decree was to provide due process to families receiving benefits under section 8 housing until HUD regulations were promulgated. Since the present regulations provide the process for families living in section 8 housing, the purpose of the consent decree has been satisfied. Accordingly, the consent decree will be vacated on motion of defendant PHA.

AND NOW, this 7th day of November 2005 IT IS HEREBY ORDERED that PHA's Motion to Vacate the Consent Decree is GRANTED.

BY THE COURT:

/s/ Clifford Scott Green
CLIFFORD SCOTT GREEN, S.J.

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[1] *Brown v. Philadelphia Housing Authority*, 237 F. Supp.2d 567, 574 (E.D. Pa., 2002) citing *Hodge v. Department of Housing & Urban Development*, 862 F.2d 859 (11th Cir. 1989).

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-5317

VANESSA HENDERSON, on behalf of herself and all other persons similarly situated

v.

ANTHONY MORRONE, individually and as Director of the Section 8 Program of the Philadelphia Authority; THOMAS J. KELLY, JR., individually and as Executive Director of the Philadelphia Housing Authority; THOMAS MCINTOSH, individually and as Chairman of the Board of Directors of the Philadelphia Housing Authority; HARRY SEWELL; HERMINE HART; CARMELITA THILL; DANTE MATTIONI, Individually and as members of the Board of Directors of the Philadelphia Housing Authority; PHILADELPHIA HOUSING AUTHORITY

Vanessa Henderson and the certified class whom she represents,

Appellants.

SUR PETITION FOR REHEARING

Present: SCIRICA, *Chief Judge*, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, and JORDAN *Circuit Judges*, and GREENBERG, *Senior Circuit Judge*[*]

The petition for rehearing filed by appellee in the above entitled case having been submitted to the judges who par-

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[*] As to panel rehearing only.

ticipated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

/s/ Michael A. Chagares
Circuit Judge

DATED: February 22, 2007

DMM/cc: Paul A. Brooks, Esq.
Michael Donahue, Esq.
George D. Gould, Esq.
Susan J. French, Esq.
Virginia L. Hogben, Esq.
Alan C. Kessler, Esq.

APPENDIX D

§ 982.555 Informal hearing for participant.

(a) *When hearing is required.*—(1) A PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:

(i) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.

(ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule.

(iii) A determination of the family unit size under the PHA subsidy standards.

(iv) A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the PHA subsidy standards, or the PHA determination to deny the family's request for an exception from the standards.

(v) A determination to terminate assistance for a participant family because of the family's action or failure to act (see § 982.552).

(vi) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules.

(2) In the cases described in paragraphs (a)(1)(iv), (v) and (vi) of this section, the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract.

(b) *When hearing is not required.* The PHA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) Establishment of the PHA schedule of utility allowances for families in the program.

(4) A PHA determination not to approve an extension or suspension of a voucher term.

(5) A PHA determination not to approve a unit or tenancy.

(6) A PHA determination that an assisted unit is not in compliance with HQS. (However, the PHA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in § 982.551(c).)

(7) A PHA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the PHA to exercise or not to exercise any right or remedy against the owner under a HAP contract.

(c) *Notice to family.* (1) In the cases described in paragraphs (a)(1)(i), (ii) and (iii) of this section, the PHA must notify the family that the family may ask for an explanation of the basis of the PHA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

(2) In the cases described in paragraphs (a)(1)(iv), (v) and (vi) of this section, the PHA must give the family prompt written notice that the family may request a hearing. The notice must:

(i) Contain a brief statement of reasons for the decision,

(ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and

(iii) State the deadline for the family to request an informal hearing.

(d) *Expeditious hearing process.* Where a hearing for a participant family is required under this section, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

(e) *Hearing procedures*—(1) *Administrative plan.* The administrative plan must state the PHA procedures for conducting informal hearings for participants.

(2) *Discovery*—(i) *By family.* The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

(ii) *By PHA.* The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

(iii) *Documents.* The term "documents" includes records and regulations.

(3) *Representation of family.* At its own expense, the family may be represented by a lawyer or other representative.

(4) *Hearing officer: Appointment and authority.* (i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(5) *Evidence.* The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) *Issuance of decision.* The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

(f) *Effect of decision.* The PHA is not bound by a hearing decision:

(1) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.

(g) *Restrictions on assistance to noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 45661, Sept. 1, 1995; 61 FR 13627, March 27, 1996; 64 FR 26650, May 14, 1999; 64 FR 43613, Aug. 11, 1999; 64 FR 56911, Oct. 21, 1999; 65 FR 16823, March 30, 2000]

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PLAINTIFFS | DEFENDANTS

HENDERSON, Vanessa
on behalf of herself and all
other persons similarly situated

vs

MORRONE, Anthony
individually and as Director
of the Section 8 Program of
the Philadelphia Authority
KELLY, Thomas J. Jr.
individually and as Executive
Director of the Philadelphia
Housing Authority,
McINTOSH, Thomas
individually and as Chairman of
the Board of Directors of the
Philadelphia Housing Authority
SEWELL, Harry
HART, Hermine
THILL, Carmelita
MATTIONI, Dante
Individually and as members of th
Board of Directors of the Phila-
delphia Housing Authority
PHILADELPHIA HOUSING AUTHORITY

CAUSE

C/R Action for deprivation of rights to due
process

(RELATED TO C.A. 79-1702 CG)

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Microfiche

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
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				JS 6	11/8/79

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1/78)

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APPENDIX E

BEST AVAILABLE COPY

DATE	NR.	PROCEEDINGS 79 - 4190
~~1979~~		
1 NOV	19	PLFF'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS WITH AFFIDAVIT IN SUPPORT THEREOF, FILED
(1) "	19	ORDER AUTHORIZING PLFF TO FILE THE COMPLAINT IN THIS ACTION IN FORMA PAUPERIS ETC., FILED CG 11/20/79 ENTERED & COPIES MAILED
(1) "	19	Complaint filed
"	19	Summons Exit (USM 285 Not Attached)
2 "	19	MOTION AND ORDER SPECIALLY APPOINTING CHARLES ISELEY & MELVIN GOWANS TO SERVE THE COMPLAINT & TRO UPON ALL DEFTS, FILED 11/20/79 ENTERED/SUMMONS MAILED TO COUNSEL
3 "	19	PLFF'S MOTION FOR TEMPORARY RESTRAINING ORDER, AFFIDAVIT AND MEMORANDUM IN SUPPORT, FILED
(3) "	19	ORDER THAT DEFTS ARE ENJOINED FROM TERMINATING PLFF FROM PARTICIPATION IN THE SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM AND ARE ORDERED TO ISSUE PLFF A CERTIFICATE OF FAMILY PARTICIPATION AND TO CONTINUE TO MAKE HOUSING ASSISTANCE PAYMENTS ON PLFF'S BEHALF CONSONANT WITH THE STATUTORY AND REGULATORY REQUIREMENTS OF THE SECTION 8 PROGRAM AND SCHEDULING 12/4/79 AT 9:15 A.M. IN COURTROOM 15B FOR A HEARING ON PLFF'S MOTION FOR A PRELIMINARY INJUNCTION, FILED 11/20/79 ENTERED & COPIES MAILED
4 "	21	Plff's request for production of documents, filed
5 "	21	Plff's notice of taking the deposition of the most appropriate employee of the Phila. Housing Authority, filed
6 "	30	PLFF'S MOTION FOR EXPEDITED DISCOVERY, MEMORANDUM IN SUPPORT AND CERTIFICATION, FILED
7. DEC.	11	Letter dd. 11/29/79 from James Hickey,Esq.of The Phila.Housing Authority to Judge Green, advising the Court that as a result of the facts presented by V.Henderson(plf on 11/27/79 when she responded to her termination, The Philadelphia Housing Authorit has decided to issue a Certificate of Family Participation & to restore all benefit to Vanessa Henderson,etc.,filed.
8 "	20	Report of Pretrial Conference Green, J., filed
1980		
9 FEB	14	STIPULATION AND ORDER EXTENDING TIME TO 3/12/80 FOR PLFF TO FILE THE MOTION FOR DETERMINATION OF CLASS ACTION, FILED 2/14/80 ENTERED & COPIES MAILED
10 MAR	26	Letter dated 3/14/80 to Judge Green from David A. Searles, Esq. advising the Court on the present status of the case etc., filed
11 Apr	21	Letter dtd. 4/15/80 to Judge Green from James Hickey, Esq. re: Status of Settlement Negotiations, filed
(1982)		
12 OCT	20	Copy of Clerk's Notice of Dismissal pursuant to Local Rule 23(a), filed 10/20/82 Notice mailed to counsel
13 Nov.	26	STIPULATION AND ORDER THAT THIS ACTION IS CERTIFIED AS A CLASS ACTION ON BEHALF OF ALL PERSON WHO ARE PRESENTLY OR MAY IN THE FUTURE BE TENANTS UNDER SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM-EXISTING HOUSING, ADMINISTERED BY THE PHILA. HOUSING AUTHORITY, FILED. CG 11-26-82 Entered and copies mailed.
14 "	26	STIPULATION AND ORDER THAT THE STIPULATION SUBMITTED TO THE COURT AND ENTERED INTO BY THE PARTIES IN FULL SETTLEMENT OF THIS MATTER IS APPROVED, PLFFS AND DEFTS AND THEIR SUCCESSORS SHALL ABIDE BY AND IMPLEMENT THE PROCEDURES AND AGREEMENTS WHICH ARE SET FORTH IN THE STIPULATION, ALL PARTIES SHALL BEAR THEIR OWN COSTS, EXPENSES AND ATTORNEY FEES, FILED. CG 11-26-82 Entered and copies mailed.

CONT.

Microfiche

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 79-4190
VANESSA HENDERSON	ANTHONY MARRONE, ET AL	PAGE ___ OF ___ PAGE

DATE	NR.	PROCEEDINGS
1983		
15 Mar.	24	JOINT MOTION FOR THE FORM OF NOTICE OF PROPOSED SETTLEMENT, FILED.
(15)"	29	ORDER DATED 3/28/83 THAT THE FORM OF NOTICE AND THE METHOD OF GIVING NOTICE PROPOSED BY THE PARTIES IN THEIR JOINT MOTION ARE APPROVED, FILED. 3/30/83 entered & copies mailed
(15) Apr.	4	ORDER THAT THE COURT WILL HOLD A HEARING ON APRIL 27, 1983 AT WHICH SECTION 8 TENANTS OR APPLICANTS MAY PRESENT OBJECTIONS TO THE SETTLEMENT, FILE 4/5/83 Entered and copies mailed.
16 "	27	Argued Sur: Hearing of 4/27/83; re: Section 8 tenants may present objections to the Settlement; no Objections-Court signs Consent Decree, filed.
17 "	27	ORDER THAT THE STIPULATION SUBMITTED TO THE COURT AND ENTERED INTO BY THE PARTIES IN FULL SETTLEMENT OF THIS MATTER IS HEREBY APPROVED AND ENTERED AS THE ORDER OF THIS COURT; IT IS FURTHER ORDERED THAT PLFFS AND DEFTS AND THEIR SUCCESSORS SHALL ABIDE BY AND IMPLEMENT THE PROCEDURES AND AGREEMENT WHICH ARE SET FORTH IN SAID STIPULATION AND SPECIFICALLY INCORPORATED BY REFERENCE HEREIN, ETC. FILED. 4/27/83 Entered and Copies mailed.
18 "	27	ORDER THAT THE CONSENT DECREE ENTERED ON NOVEMBER 26, 1982 IN THIS MATTER IS HEREBY VACATED, FILED. 4/27/83 Entered and Copies mailed.
19 May	2	Certification of Service of Fincourt B. Shelton, Esq. re: "Copy of Notice of Settlement of Class Action case between Plff and Deft. to all Section 8 Housing Assistance Payments recipients by Mail on April 15, 1983" filed. Microfiche
2004		
20 Nov.	9	DEFENDANT PHILADELPHIA HOUSING AUTHORITY'S MOTION TO VACATE CONSENT DECREE, MEMORANDUM, CERTIFICATE OF SERVICE. (fdc)
21 " "	" "	Appendix of Exhibits of Defendant Philadelphia Housing Authority in Support of Motion to Vacate Consent Decree, Certificate of Service.
22 Dec.	2	STIPULATION AND ORDER THAT PLAINTIFFS SHALL HAVE AN EXTENSION OF TIME UNTIL AND INCLUDING JANUARY 3, 2005 TO ANSWER, PLEAD OR OTHERWISE MOVE IN RESPONSE TO DEFENDANTS' MOTION TO VACATE THE CONSENT DECREE. SIGNED BY HON. GREEN. ENTERED AND COPIES MAILED.12,
23 " "	22	Entry of Appearance of Paul A. Brooks, Esq. on behalf of Plaintiff Certificate of Service. (fdc)
23 Dec	27	STIPULATION AND ORDER THAT PLAINTIFFS SHALL HAVE AN EXTENSION OF TIME UNTIL AND INCLUDING 1/14/05 WITHIN WHICH TO ANSWER, PLEAD OR OTHERWISE FILE A RESPONSE TO PHA'S MOTION TO VACATE CONSENT DECREE. 12/28/04 ENTERED AND COPIES MAILED.
2005		
25 Jan	14	Plaintiffs' Answer to Defendant PHA'S Motion to Vacate Consent Decree, Certificate of Service. (fdc)
26 Jan	31	Reply Brief of Defendant Philadelphia Housing Authority in Support of its Motion to Vacate Consent Decree, Certificate of Service. (f
27 Feb	14	ORDER THAT A CONFERENCE WILL BE HELD IN THE ABOVE CAPTIONED CASE ON 2/17/05 AT 11:00 AM IN CHAMBERS. ENTERED AND COPIES MAILED 2/14, SIGNED BY HON. GREEN. (fdc)'
28 " "	18	Report of Conference on 2/17/05 before Judge Green.
29 Aug.	26	ORDER THAT AN ORAL ARGUMENT ON THE MOTION TO VACATE THE CONSENT DECREE WILL BE HELD 9/15/05 AT 11:00 AM. SIGNED BY HON. GREEN ENTERED AND COPIES MAILED 8/26/05. (fdc)

CIVIL DOCKET CONTINUATION SHEET

DEFENDANT

DOCKET NO. _____

PAGE ___ OF ___ PAGES

		PROCEEDINGS
		Minute Entry. Hearing Re: Motion to Vacate on 9/15/05 at 11:00 am. Time in court: 1hr. and 10 mins. before Judge Green. (fdc)
		Transcript. Hearing before Judge Green on 9/15/05. (fdc)
	8	ORDER THAT DEFENDANT'S MOTION TO VACATE THE CONSENT DECREE IS GRANTED. SIGNED BY HON. GREEN 11/8/05 ENTERED AND COPIES MAILED. (fdc)
	5	Plaintiffs' Notice of Appeal, Certificate of Service. (Re: Order of 11/8/05)
		Clerk's Notice to USCA.
" "	9	USCA Notice of Docketing ROA Appeals Docket No. 05-5317. (fdc)
2006		
Jan.	10	Notice of Appeal Filing Fee $255.00 Receipt# 924687. (fdc)

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APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C.A. No. 79-
CLASS ACTION

VANESSA HENDERSON, on behalf of herself and all other persons similarly situated,
Plaintiff,

vs.

ANTHONY MORRONE, individually and as Director of the Section 8 Program of the Philadelphia Housing Authority, THOMAS J. KELLY, JR., individually and as Executive Director of the Philadelphia Housing Authority, THOMAS MCINTOSH, individually Class Action and as Chairman of the Board of Directors of the Philadelphia Housing Authority, HARRY SEWELL, HERMINE HART, CARMELITA THILL, DANTE MATTIONI, individually and as members of the Board of Directors of the Philadelphia Housing Authority, PHILADELPHIA HOUSING AUTHORITY.
Defendants.

COMPLAINT

I. *PRELIMINARY STATEMENT*

1. This is a class action for injunctive and declaratory relief as well as damages brought by a low-income tenant, on behalf of herself and all others similarly situated, who challenges the defendants' policy and practice of terminating tenants' housing subsidies under Section 201(a) (8) of the Housing and Community Development Act of 1974, 42 U.S.C. §1437f, (Section 8), without affording tenants notice and an opportunity to be heard prior to the termination.

2. Plaintiff brings this action pursuant to 42 U.S.C. §1983 alleging that the actions of the defendants constitute violations of the due process clause of the Fifth and Fourteenth Amendments and the Housing and Community Development Act of 1974.

II. *JURISDICTION*

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §1343(3) and (4) as this is an action authorized by 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights privileges or immunities secured by the Constitution and the laws of the United States; by 28 U.S.C. §1331 as this is an action arising under the Constitution and laws of the United States wherein the matter in controversy exceeds the sum of ten thousand dollars ($10,000), exclusive of interest and costs; by 28 U.S.C. §1337 as this is an action arising under an Act of Congress regulating interstate commerce; and by 28 U.S.C. §§2201, 2202 and Rule 57 of the Federal Rules of Civil Procedures authorizing declaratory and other necessary relief.

III. *PARTIES*

4. Plaintiff Vanessa Henderson is a low-income tenant residing at 7441 Limekiln Pike, Apt. A-5, Philadelphia, Pennsylvania.

5. Defendant Philadelphia Housing Authority (hereinafter "PHA") is a public body, corporate and politic, exercising public powers of the Commonwealth of Pennsylvania as an agency thereof, existing under the laws of the Commonwealth of Pennsylvania, Act of May 28, 1937, P.L. 955 *et seq.*, 35 P.S. §1541 *et seq.*, with the right to sue and be sued. PHA's main offices are located at 2012 Chestnut Street, Philadelphia, PA. PHA administers the distribution of federal rental assistance payments under the Section 8 Program; its Section 8 Program offices are located at 1216 Walnut Street, Philadelphia, PA.

6. Defendant Thomas J. Kelly, Jr. is the Executive Director of PHA and is responsible both for administering the daily operations of PHA and for PHA's policies and practices in administering the Section 8 Program.

7. Defendant Anthony Morrone is the Director of the Section 8 Program and is responsible for administering the daily operations of the Section 8 Program.

8. Defendants Thomas McIntosh, Harry Sewell, Hermine Hart, Carmelita Thill and Dante Mattioni are the five members of the Board of Directors of PHA and, as such, are responsible for the formulation of PHA policy.

9. At all times relevant, defendants were acting under color of state law as agents, servants, and/or employees, as well as high officers, of the Philadelphia Housing Authority.

10. All defendants are sued in their individual as well as official capacity.

IV. *CLASS ACTION ALLEGATIONS*

11. Plaintiff Henderson seeks to maintain this action on her own behalf and on behalf of all other persons similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Civil Rules of Procedure. The plaintiff class is defined to include all persons who have been or will be terminated from the Section 8 Program without the benefit of adequate notice and opportunity for hearing.

12. The class is so numerous that joinder of all members is impractical. The number of class members is not presently known but may be discovered through documents in the possession of the defendants.

13. There are questions of law and fact common to the class, i.e., whether the defendants have terminated class members from participation in the Section 8 Program without adequate notice and opportunity for a hearing and whether that procedure is violative of the law.

14. The claims of the named plaintiff, i.e., that lack of notice and opportunity for a hearing prior to termination from participation in the Section 8 Program is violative of law, are typical of the claims of the class.

15. The named plaintiff will fairly and adequately protect the interest of the members of the class in that she promises vigorous and complete prosecution of this matter and her attorneys are experienced with litigation in federal courts concerning low-income housing.

16. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and declaratory relief with respect to the class as a whole.

V. *FACTUAL ALLEGATIONS*

17. The Section 8 Program is a federal housing program, adopted by Congress as part of the Housing and Community Development Act of 1974, 42 U.S.C. §1437f, under which the local public housing authority, by contract with the Department of Housing and Urban Development, makes rental payments directly to private landlords for the benefit of low-income people.

18. Under the Section 8 Program in Philadelphia, a family applies to PHA for participation. If the family meets the financial eligibility criteria, PHA issues a Certificate of Family Participation. Equipped with the Certificate, the family has the responsibility to find a private landlord willing to participate in the program.

19. Once PHA approves the lease, the tenant's share of the rent and utilities is fixed at 25% of their adjusted family income. PHA supplements the rent by making Housing Assistance Payments directly to the landlord out of funds received through its Annual Contribution Contract with HUD.

20. Plaintiff Henderson, a mother of two children aged 1 and 2, applied for and received a Certificate of Family Participation from PHA in December 1977.

21. On January 1, 1978, plaintiff signed a lease, which had been approved by PHA, with Robert Court Apartments to rent a two-bedroom apartment.

22. Plaintiff's sole source of income for herself and her two children is a monthly public assistance grant of $302.00.

23. The rental price for plaintiff's apartment is $227.00. Under the Section 8 Program, plaintiff contributed $42 towards the rent each month and paid her own electricity bill, which average $20 each month and PHA made monthly Housing Assistance Payments to Robert Court Apartments of $185.00.

24. Plaintiff has resided at Robert Court Apartments under the terms of the Section 8 Program from January 1, 1978, to the present.

25. On October 25, 1978, plaintiff received a letter from the Section 8 Program which stated that, effective immediately all Housing Assistance Payments made on her behalf had been terminated and, further, that she had been determined ineligible for further participation in the Section 8 Program. The letter is attached hereto and identified as Exhibit A.

26. Defendants' stated reason for the termination was that plaintiff misrepresented her family income and composition. Defendants' allegations was based on a letter from plaintiff's public assistance caseworker to PHA alleging that plaintiff's cousin resided with her and paid her rent. In fact, plaintiff's cousin only used the residence as a mailing address and has since stopped doing so. Had the plaintiff been provided with pre-termination notice and opportunity for a hearing, she would have been able to present evidence disproving the charge of misrepresentation of income.

27. The October 25, 1979, letter terminating plaintiff's participation in the Section 8 Program does not notify plaintiff of her right to challenge the termination.

28. Upon receipt of the October 25, 1979, letter, plaintiff Henderson immediately contacted PHA and was told by a PHA employee that the notice had been sent in error and to disregard it.

29. During the first week of. November, plaintiff Henderson was notified by the manager of Robert Court apartments that PHA had not made its Housing Assistance Payment to the landlord for November.

30. Plaintiff Henderson again contacted PHA and was told by a PHA employee that the October 25, letter terminating her benefits was not in error and that she had in fact been terminated from the program.

31. At no time was plaintiff Henderson informed of a procedure by which she could obtain an impartial evidentiary hearing prior to the termination of her participation in the Section 8 Program.

32. As a result of the defendants' action, plaintiff Henderson is unable to pay the monthly rental charge to her landlord and consequently fears that legal action will be taken against her for nonpayment of rent. She is being forced to vacate her apartment and to look for alternative housing in a very tight housing market.

33. Plaintiff Henderson had located another private landlord who was willing to lease her a dwelling under the Section 8 Program but, as a result of her termination by defendants, plaintiff was unable to accept the offer to lease.

34. This offer to lease has since been withdrawn and the other landlord refuses to further discuss renting to plaintiff until she has a Certificate.

35. As a result of defendants' actions, plaintiff is suffering and will continue to suffer immediate and irreparable harm in that she and her two children are being forced to vacate their home or be evicted therefrom because they are clearly unable to pay the $227 monthly rent and unable to secure affordable decent, safe and sanitary alternative housing. Plaintiff is also suffering extreme anxiety and fear for herself and her family over the loss of her Certificate of Family Participation in the Section 8 Program. Plaintiff has no adequate remedy at law.

36. Plaintiff alleges on information and belief that defendants have no adequate written procedures governing the termination of Certificate of Family Participation which comply with the requirements of 42 U.S.C. § 1437f and rules and regulations promulgated thereunder.

VI. *CAUSES OF ACTION*

FIRST CLAIM: DUE PROCESS

37. Plaintiff hereby incorporates by reference the foregoing paragraphs 1 through 36.

38. Under the Fifth and Fourteenth Amendments, rent subsidies under the Section 8 Program cannot be terminated arbitrarily or capriciously or in the absence of adequate procedural protection.

39. Defendants, acting under color of state law, have terminated plaintiff Henderson's participation in the Section 8 Program arbitrarily and capriciously, without providing her adequate notice and an opportunity for a prior hearing to challenge the termination.

40. Defendants' actions have violated the rights of plaintiff Henderson and the class she represents to due process of law.

SECOND CLAIM: STATUTORY

41. Plaintiff hereby incorporates by reference the foregoing paragraphs 1 through 36.

42. Defendants' actions, in terminating plaintiff and the members of her class from participation in the Section 8 Program without notice and an opportunity for a prior hearing to Challenge the termination, violate the Housing and Community Development Act of 1974, 42 U.S.C. §1437, and regulations promulgated thereunder.

VII. *PRAYER FOR RELIEF*

WHEREFORE, plaintiff Vanessa Henderson on behalf of herself and all others similarly situated, pray that this court enter relief as follows:

1. Assume jurisdiction of this case.
2. Certify this action to proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.
3. Grant a temporary restraining order and a preliminary injunction restraining the defendants, their agents and all persons acting in concert with them from revoking plaintiff Vanessa Henderson's Certificate of Family Participation in the Section 8 Program and from refusing to continue her Housing Subsidy Entitlements under that Program unless and until Ms. Henderson is provided with:
    a. A written notice detailing the reasons for the proposed revocation, the facts underlying those reasons, and the grounds believed by the defendants to constitute good cause for revocation of her Section 8 Certificate;
    b. An opportunity to contest those facts and reasons in a hearing before an impartial decision-making body and in which Ms. Henderson may be repre-

sented by counsel or other appropriate representative of her choice, and may present testimony and documentary evidence and may have access to all records of the defendants relating to her;

c. A written decision of the decision-making body with findings of facts based solely upon the hearing, conclusions as to whether good cause for revocation exists and the law supporting that conclusion.

d. The right to appeal the decision.

4. Issue a declaratory judgment, pursuant to Title 28 U.S.C. §§2201 and 2202, that the acts, omissions, practices, policies and procedures of defendants complained of herein violate plaintiff class members' rights as heretofore alleged.

5. Grant permanent injunctive relief on behalf of the plaintiff class prohibiting, enjoining and restraining the defendants, their agents, employees, successors in office and all persons acting in concert with them from revoking, terminating or otherwise denying to the class members the entitlements which they are receiving under the Section 8 Program, without affording class members those rights set out in Paragraph 3, subparts a, b, c and d above, and informing all class members of the basis for good cause Section 8 revocations.

6. Grant permanent injunctive relief on behalf of the plaintiff class requiring the defendants to give written notice to all members of the plaintiff class who have been terminated from participation in the Section 8 Program without a prior oral evidentiary hearing, and affording such persons an opportunity for such a hearing as set out in Paragraph 3, subparts a, b, c, and d above, and if they are found to have been improperly

terminated, affording such members of the class priority on recertification in the Section 8 Program.

7. Award plaintiff costs and reasonable attorneys' fees.
8. Such other relief as deemed appropriate by the Court.

/s/ David A. Searles
DAVID A. SEARLES
JOYCE S. WILKERSON
GEORGE D. GOULD
HAROLD R. BERK
COMMUNITY LEGAL SERVICES, INC.
Sylvania House
Juniper and Locust Streets
Philadelphia, PA 19107
Tele: (215) 893-5306

DATED: November 19, 1979

THE PHILADELPHIA HOUSING AUTHORITY

Section 8 Housing Program
Re-Examination Department
1216 Walnut Street
Phila., Pa. 19107

October 25, 1979

Ms. Venessa Henderson
7441 Limekiln Pike #A-5
Phila., Pa.
Case #4983

Dear Ms. Henderson:

As of date of this notification, the Housing Assistance Payments Contract, and all Housing Assistance Payments made on our behalf have been terminated. Also, you have been determined ineligible for further Section 8 Housing Assistance.

The reason for this action is due to your failure to comply with the obligations under Paragraph 7 of the Certificate of Family Participation.

The following are the reasons as to why you are in violation of the Certificate of Family Participation.

Misrepresentation of Family Income and Composition.

Therefore, effective immediately, you will be responsible for the full amount of the rent.

Any responses regarding this matter are to be directed to the Re-Examination Department.

Sincerely,

/s/ Anthony Amoroso
ANTHONY AMOROSO
Re-Examination Department
Section 8 Housing Program

AA: jz
cc: Owner
Devirgiliis
P.H.A. – Legal
Re-Examination Dept.
File

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Filed APR. 27, 1983]

C.A. NO. 79-4190
CLASS ACTION

VANESSA HENDERSON, et al.

vs.

ANTHONY MORRONE, et al.

ORDER

AND NOW, this 27th day of April, 1983, upon consideration of the Stipulation filed by both parties and a hearing held pursuant to Fed.R.Civ.P. 23(e) on the objections thereto in the above-captioned matter, IT IS ORDERED that the Stipulation submitted to the Court and entered into by the parties in full settlement of this matter is hereby APPROVED and entered as the Order of this Court; and

IT IS FURTHER ORDERED that plaintiffs and defendants and their successors shall abide by and implement the procedures and agreements which are set forth in said Stipulation and specifically incorporated by reference herein.

All parties shall bear their own costs, expenses, and attorney's fees.

BY THE COURT:

/s/ Clifford Scott Green
CLIFFORD SCOTT GREEN, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Filed NOV. 26 1982]

CIVIL ACTION
NO. 79-4190
CLASS ACTION

VANESSA HENDERSON, et al.

vs.

ANTHONY MORRONE, et al.

STIPULATION

Plaintiffs have commenced a civil class action seeking injunctive and declaratory relief, as well as damages, to enjoin and declare as violative of their constitutional and statutory rights the defendants' failure to provide tenants under the Section 8 Housing Assistance Payments Program-Existing Housing (hereinafter referred to as "Program") with notice and an opportunity to be heard prior to the termination of the tenants from participation in the Program. Defendants dispute that plaintiffs have been deprived of any rights or that defendants have breached or failed to perform any duties or obligations owing to plaintiffs.

Plaintiffs and defendants have agreed and executed a Stipulation that this action may proceed as a class action. The class is defined as all persons who are presently or may in the future be tenants under the Section 8 Housing Assistance Payments Program—Existing Housing.

The parties are mutually desirous of effectuating a settlement of the matters raised by plaintiffs' Complaint by entering into a settlement resolving the issues presented therein.

Both plaintiffs and defendants, however, maintain that the respective allegations as advanced in this action are meritorious and that the Court would so find following litigation. Adherence by the parties to this agreement shall not be construed as an admission to the truth of any of those allegations.

Therefore, in the interest of avoiding litigation, the parties hereby agree to be bound as follows:

1. The defendants may terminate a recipient from the Section 8 Existing Housing Program only for good cause. Such good cause shall be as specified in the applicable HUD regulations and HUD Handbook 7420.7.

2. Written notice of such good cause reasons for termination shall be provided to future recipients when they are accepted by the program.

3. Upon a decision to terminate Section 8 assistance, the Housing Authority shall give thirty-day advance written notice of its intent to the recipient as set forth in Exhibit A attached hereto and incorporated herein. Such notice shall include the reason for the termination, the right of the recipient to request, within ten (10) days, an informal hearing, and the right of the recipient to be represented at the hearing, at his/her own expense, by counsel or other representative of his/her choice.

4. Upon receipt of a tenant's Request for a Hearing, the Housing Authority shall give the tenant a written explanation of the hearing procedure and inform the tenant of the hearing date giving sufficient time to prepare for the hearing, at a time during a working day. The parties shall, either in person or by first class U.S. mail, be served notice of the time and place of the hearing, at least ten days prior to the hearing. Section 8 payments shall continue until a final decision of the hearing officer is rendered.

5. Hearings may be continued at the request of either the Housing Authority or tenant for good cause such as illness or other unavoidable absence of a party or witness, or by agreement between the Housing Authority and the tenant.

6. The issue to be determined at such hearings shall be whether the Housing Authority has good cause as defined in paragraph 1 of this Stipulation to terminate the tenant's housing assistance subsidy.

7. For purposes of the hearing, the tenant shall:

A. Have the right to retain counsel or other representative, if desired, at his/her own expense.

B. Be given an opportunity to examine evidence and question any adverse witnesses, and to present testimony in his/her favor.

C. Be permitted to examine before the hearing, and to copy at his/her expense, all documents of PHA that are relevant to the hearing. If a document is not made available, after request therefor by the tenant, and PHA attempts to rely on it at the hearing, the tenant shall have the right to continue the hearing in order to present evidence in rebuttal.

8. The hearing decision must be in writing, must be based solely on evidence provided at the hearing, and must state the legal and evidentiary grounds for the decision. In addition, it must be dated and signed by the hearing officer, and shall be forwarded to all parties and their representatives within a reasonable time after the conclusion of the hearing.

9. The hearing officer may be a PHA employee subject to the following provisions:

A. Parties or their representative in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact or conclusions of law in that

contested case, except upon notice and opportunity for all parties to participate.

B. No individual who participates in the making of the decision at the informal hearing shall be involved in the day to day administration of the program.

10. The decision of the hearing officer shall go into effect immediately after the issuance of the decision in writing. A tenant may appeal from the decision with thirty (30) days after issuance of said decision. The appeal shall be governed by the provisions of the Pennsylvania Local Agency Law, 2 Pa. C.S.A. §§751-754. The hearing officer shall issue with the decision a notice of the tenant's right to appeal within thirty (30) days. PHA shall not be obligated to continue to make HAP Housing Assistance Payments after a decision by the hearing officer adverse to the tenant.

11. If the hearing officer's decision is vague or ambiguous, either party may petition for clarification of the decision within fifteen (15) days after the decision. The party filing the petition shall give five (5) days' notice of the petition to all other parties. The hearing officer shall respond promptly with a clarification of the decision. The decision will not become a final adjudication until the clarification is issued.

12. Notwithstanding the foregoing appeal provisions, a tenant waives no rights, claims or defenses in any eviction action commenced in a judicial forum.

13. Should the United States Department of Housing and Urban Development promulgate regulations which require PHA to perform acts which are inconsistent with this Stipulation or which prohibit PHA from performing acts consistent with this Stipulation, such regulations shall govern. In the event that such regulations are promulgated either party shall file an appropriate petition to modify this decree. This provision shall not be construed as a waiver of either party's

right to challenge the validity of such regulations in an appropriate forum.

14. All parties shall bear their own costs, expenses and attorney's fees.

/s/ Clifford Scott Green
CLIFFORD SCOTT GREEN
Judge
November 26, 1982

/s/ Fincourt B. Shelton
FINCOURT B. SHELTON, Esquire
Attorney for Defendants

/s/ Arthur E. Schmidt
GEORGE D. GOULD
ARTHUR E. SCHMIDT
Attorneys for Plaintiffs

Date: 11/18/82

NOTICE OF INTENTION TO TERMINATE HOUSING ASSISTANCE PAYMENTS

TO: Date:

Dear Mr./Ms.:

You are hereby notified that the Philadelphia Housing Authority intends to terminate your Section 8 Housing Assistance Payments thirty (30) days from the date of this letter. The reason for the termination is as follows:

The nature of the evidence against you is:

* * * *

You may request a hearing to challenge the proposed termination by signing and sending to the Philadelphia Housing Authority the bottom portion of this letter entitled *Request for Hearing*. This Request must be sent within ten (10) days/to: after this notice was mailed,

Section 8 Housing Program
Philadelphia Housing Authority
1216 Walnut Street
Philadelphia, Pennsylvania 19107

If you send a timely Request to PHA, a hearing will be scheduled during working hours at PHA offices at 1216 Walnut Street. For purposes of the hearing, you have the following rights: a) to examine before the hearing, and, at your expense, to copy all documents, records, and regulations of PHA that are relevant to the hearing; b) to be represented by counsel or other representative, at your expense; c) to confront and cross-examine adverse witnesses; d) to present evidence on your own behalf; e) to appeal the decision of the hearing officer.

If you request a hearing, your Section 8 benefits will continue until a decision is made.

_____

Section 8 Housing Program
Philadelphia Housing Authority

* * * *

REQUEST FOR HEARING

I hereby request a hearing to challenge the decision of the Philadelphia Housing Authority to terminate my Section 8 Housing Assistance Payments.

_____

(Signature of Tenant)

_____

(Address of Tenant) Date:

Date:

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION
NO. 79-4190

VANESSA HENDERSON,
PLAINTIFF,

VS.

PHILADELPHIA HOUSING AUTHORITY, et al,
DEFENDANTS.

PHILADELPHIA, PA.
SEPTEMBER 15, 2005

BEFORE CLIFFORD SCOTT GREEN,S.J.

HEARING

APPEARANCES:

FOR THE PLAINTIFFS:

COMMUNITY LEGAL SERVICES, INC.
BY: GEORGE D. GOULD, ESQ.
PAUL A. BROOKS, ESQ.
1424 CHESTNUT STREET
PHILADELPHIA, PA 191102-02505

FOR THE DEFENDANTS:

WOLF BLOCK
BY: SUSAN J. FRENCH, ESQ.
VIRGINIA L. HOGBEN, ESQ.
1650 ARCH STREET
22ND FLOOR
PHILADELPHIA, PA. 19103

SIDNEY S. ROTHSCHILD
OFFICIAL COURT REPORTER
ROOM 1234 - U.S. COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA. 19106.
(215) 627-0184

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT PRODUCED BY COMPUTER.

* * * *

MR. BROOKS: GOOD MORNING.

MS. FRENCH: GOOD MORNING.

THE COURT: HOW ARE YOU?

I GUESS THIS DECREE HAS BEEN HERE AS LONG AS I HAVE, NOT QUITE, BUT ALMOST.

WHAT IS THE REAL PRACTICAL PROBLEM IN REGARD TO VACATING IT?

MR. BROOKS: IN REGARD TO VACATING IT.

THE COURT: NOBODY USES IT.

MR. BROOKS: WE FEEL IT IS QUITE HELPFUL TO HAVE AN ENFORCEABLE ORDER. AND, THERE ARE PROVISIONS IN THE CONSENT DECREE SUCH AS THE REQUIREMENT THAT PHA GIVES 10 DAYS ADVANCED WRITTEN NOTICE OF A HEARING AND AT LEAST 30 DAYS NOTICE BEFORE TERMINATION PROVISIONS IN THE CONSENT DECREE, WHICH ARE NOT IN THE REGULATIONS. THEY DON'T CONFLICT WITH THE REGULATIONS, BUT THEY PROVIDE ADDED VALUE TO THE TENANTS AND WE HATE TO LOSE THOSE PROTECTIONS FOR OUR CLIENTS.

THE COURT: THE DEFENDANTS GO BACK TO SUMMARILY HOUSEKEEPING PEOPLE, WHY CAN'T YOU GET THEM DUTY FREE.

MR. BROOKS: IT IS A—

THE COURT: YOU HAVEN'T USED THIS ONE.

MR. BROOKS: JUST BECAUSE WE HAVEN'T MOVED TO ENFORCE IT DOESN'T MEAN IT IS NOT USEFUL.

THE COURT: I UNDERSTAND YOU ARE SAYING IT IS LIKE A CLUB AND IT MAKES THEM—

MR. BROOKS: IT IS OUT THERE.

THE COURT: MAKING THEM ABIDE BY IT.

UNDER THAT REASONING, IT WOULD BE HERE FOREVER.

MR. BROOKS: YOUR HONOR, I THINK AS LONG AS IT CONTINUES—

THE COURT: WHEN WOULD IT BE—

MR. BROOKS: AS LONG AS IT CONTINUES TO HAVE FORCE AND VITALITY, AS LONG AS NOTHING HAPPENS TO MAKE IT BURDENSOME ON PHA, THERE'S NO REASON IT SHOULDN'T BE HERE INDEFINITELY, YOUR HONOR.

THE COURT: SO YOU ARE TALKING ABOUT A 10-DAY NOTICE.

MR. BROOKS: WE OUTLINED I BELIEVE

EIGHT POINTS ON PAGE 16 OF THE BRIEF, EACH OF WHICH IS A SUPPLEMENTAL TO THE ADDED VALUE PROVISION OF THE CONSENT DECREE. I MENTIONED THAT THE 10 DAYS ADVANCED NOTICE WAS ONE OF THE ONES WE FIND VERY VALUABLE. OUR CLIENTS FOR EXAMPLE, THEIR MEMORY IS NOT THAT GOOD, THEY HAVE MANY THINGS GOING ON IN THEIR LIVES, GETTING THE NOTICE MAILED AT LEAST 10 DAYS BEFORE THE

HEARING IS IMPORTANT TO THEM, BECAUSE IT MEANS THAT THEY HAVE A PRETTY GOOD CHANCE OF GETTING TO THEIR LAWYER AND GETTING TO THE HEARING.

THE COURT: HOW MANY CASES DO YOU HAVE THAT THEY DON'T HAVE THAT REALLY.

MR. BROOKS: THEY DON'T HAVE THE 10-DAY NOTICE? IT HAS BEEN A PROBLEM OFF AND ON OVER THE YEARS. AT PRESENT THEY ARE DOING SOMEWHAT BETTER. THERE ARE ALWAYS PROBLEMS IN SCATTERED CASES. WE HAD PERIODS OF TIME IN THE 10 YEARS I HAVE BEEN DOING THESE NUTS AND BOLTS CASES, BUT WE HAD A LOT OF PROBLEMS WITH 10 DAY NOTICES. THE NOTICE WOULD BE DATED 10 DAYS, NOT MAILED FOR SEVERAL DAYS, BY THE TIME THAT IT GOT TO THE CLIENTS, THEY ACTUALLY GOT IT IN THE MAIL BOX, IT WAS SEVEN DAYS, AND IT GIVES THE CLIENTS FIVE DAYS.

IF, FOR EXAMPLE, PHA—

THE COURT: WHY CAN'T YOU CALL OPPOSING COUNSEL TO SAY YOU HAD FIVE DAYS NOTICE.

MR. BROOKS: WITH PHA PRESENT DAY COUNSEL, WE GET ALONG FINE. WE POINT OUT THE PROBLEMS, THE MATTER IS CONTINUED. THERE IS NO SERIOUS PROBLEM. THAT HAS NOT ALWAYS BEEN TRUE, YOUR HONOR. SOME PHA COUNSEL OVER THE YEARS, PRESENT MEMBERS EXCEPTED, QUITE FRANKLY, HAVE BEEN VERY DIFFICULT TO EVEN REACH ON THE PHONE. NONETHELESS, YOU KNOW ONCE AGAIN KNOWING THE RIGHT IS OUT THERE IS IMPORTANT.

THE COURT: ALL RIGHT.

MR. BROOKS: BEING ABLE TO ENFORCE IT, IF NECESSARY, WHY SHOULD WE FILE A NEW LAWSUIT, TAKE THE COURT'S TIME, OUR TIME ALSO WITH EVERY LAWSUIT AND EVERY SETTLEMENT. IT IS A ROLL OF THE DICE, IF YOU WILL COME OUT BETTER OR WORSE. WE BARGAINED FOR IT. I BELIEVE THERE WERE NO COUNSEL FEES IN THE CASE. WE GAVE IT UP. THE TENANTS GAVE UP OTHER POSSIBLE THINGS THEY WANTED TO WIN. GIVEN THE PRESENT REGULATIONS, IT PROBABLY WOULD BE HARD TO GET SOMETHING LIKE THE 10 DAY ADVANCED NOTICE IF WE HAD TO SUE OVER AGAIN.

THE COURT: WHEN YOU DON'T GET—YOU DON'T COME DOWN HERE.

MR. BROOKS: IF WE SAW A SYSTEMIC PROBLEM OR IF WE SAW A POLICY DECISION BY PHA, WE WOULD FILE. FOR SPORADIC PROBLEMS, AS LONG AS PHA COUNSEL STAFF, COUNSEL CONTINUE TO DEAL WITH THESE PROBLEMS APPROPRIATELY IN AN INFORMAL MANNER, OF COURSE, WE DON'T WASTE THE COURT'S TIME.

MS. FRENCH: I'M SUSAN FRENCH. I REPRESENT THE PHILADELPHIA HOUSING AUTHORITY. WITH ME IS MY COLLEAGUE, LYNN HOGBEN. IN THE AUDIENCE BEHIND ME IS ASSISTANT GENERAL COUNSEL OF THE HOUSING AUTHORITY, SHELLY JAMES.

IF I MAY, YOUR HONOR, COMMUNITY LEGAL SERVICES REPRESENTS THE PLAINTIFFS HERE, WHO HAVEN'T BEEN TO THIS COURT IN 22 YEARS. THEY CONCEDE THAT PHA GENERALLY FOLLOWS THE POLICY AND PROCEDURES SET FORTH IN THIS DECREE.

ALL THAT PHA IS ASKING, THAT IT BE ALLOWED TO UTILIZE THE CURRENT HUD REGULATIONS TO SCHEDULE HEARINGS FOR TERMINATIONS OF SECTION 8 HOUSING BENEFITS.

AND, MOREOVER, YOUR HONOR, EVEN IF YOUR HONOR VACATED THIS DECREE TODAY, HUD REGULATIONS REQUIRE THAT BEFORE PHA COULD CHANGE ITS PROCEDURE IN ANY WAY, IT WOULD HAVE TO PUBLISH NOTICE TO THE TENANTS AND THE COMMUNITY GROUPS. THE HUD REGULATIONS REQUIRE REASONABLE NOTICE. WHILE MR. BROOKS WAS REFERRING TO THIS 10 DAY NOTICE OF HEARING REQUIREMENT, IF PHA DECIDED TO CHANGE ITS PROCEDURE, IT STILL HAS TO PROVIDE FOR REASONABLE NOTICE.

THE COURT: WHAT IS ITS PROCEDURES AND POLICY, IN TERMS OF TIME AND NOTICE?

MS. FRENCH: IN TERMS OF TIME AND NOTICE RIGHT NOW THE PROCEDURE IS 10 DAYS BECAUSE WE ARE BOUND BY THIS DECREE.

THE HUD REGULATIONS—

THE COURT: THAT'S WHAT THEY ARE AFRAID OF.

MR. FRENCH: THEY MAY BE AFRAID WE WILL CHANGE IT IN SOMEWAY, IT COULD BE CHANGED FOR THE BENEFIT OF THE TENANTS. FOR EXAMPLE, THIS DECREE REQUIRES HEARINGS BE SET ONLY DURING HEARING HOURS IN THE DAY TIME. ONE OF THE THINGS THAT PHA IS CONSIDERING HAVING EVENING HOURS FOR THOSE TENANTS IN BOTH CONVENTIONAL HOUSING AND CONVENTIONAL SECTION 8 HOUSING WHO WORK DURING THE DAY AND WOULD PREFER THE EVENING HOURS. IT IS MORE CONVENIENT FOR THEM; WE

ARE PRECLUDED FROM DOING THAT BY THIS DECREE.

ALL WE ARE ASKING IS THE OPPORTUNITY TO OPERATE OUR NOTICE AND TERMINATION AND HEARING PROGRAM IN THE SAME MANNER AS VIRTUALLY EVERY OTHER HOUSING AUTHORITY IN THE COUNTRY, UNDER THE REGULATIONS PRESCRIBED BY HUD, WHICH THE THIRD CIRCUIT HAS HELD, YOUR HONOR, PROVIDE ADEQUATE DUE PROCESS PROTECTIONS TO THE TENANTS.

MR. BROOKS: YOUR HONOR, IF I MIGHT RESPOND TO A COUPLE OF THE POINTS.

I DON'T KNOW WHERE IN THE CONSENT DECREE, TAKING A LOOK AT IT, I NEVER HEARD OF ANY PROPOSAL TO HAVE EVENING OR WEEKEND HEARINGS. I DON'T KNOW ANYTHING IN THE CONSENT DECREE THAT FORBIDS IT. CERTAINLY IF PHA WANTED TO DO THAT, AND IT WAS OPTIONAL FOR OUR TENANTS, OF COURSE WE WOULD AGREE. THAT REALLY GETS TO THE NUB OF THE PROBLEM. PHA IS TRYING. TO CREATE THIS ALLUSION THERE IS A PROBLEM WITH THE CONSENT DECREE THAT REQUIRES THE WHOLE THING TO BE THROWN OUT, WHEN NO SUCH PROBLEM EXISTS.

IF THEY WANTED TO PROVIDE ADDED VALUE TO THE TENANTS ON THEIR OWN, WE ARE PERFECTLY WILLING TO DO THAT, AS LONG AS IT IS NOT REQUIRED, WE WILL NOT AGREE TO SOMETHING THAT FORCES A TENANT ON SATURDAY, TO ATTEND A HEARING ON SATURDAYS.

WITH RESPECT TO NOTICES, I THINK MAYBE I, AT LEAST, WAS A LITTLE CONFUSED. I'M TALKING ABOUT THE NOTICE OF THE HEARING IN THE SPECIFIC CASE, THE FACT THAT PHA WOULD HAVE

TO GIVE PUBLIC NOTICE BEFORE IT CHANGED ITS SECTION 8 HEARING PROCEDURE. I MEAN IT IS NICE, YOUR HONOR, BUT AS A PRACTICAL MATTER, THE ADMINISTRATIVE AGENCY HAS VERY WIDE DISCRETION.

THE COURT: DO YOU HAVE ANY DIFFICULTY WITH THEM CONFORMING TO HUD'S PROCEDURES?

MR. BROOKS: YOUR HONOR, HUD'S PROCEDURES ARE, THEY ARE GOOD, NOT AS GOOD AS THIS CONSENT DECREE, YOUR HONOR. OUR CONSENT DECREE IS BETTER IN AT LEAST EIGHT WAYS. WE FOUGHT FOR THAT AND THEY CONTINUE TO HAVE VALUE. WE ARE CONCERNED THAT IF PHA IS RELIEVED OF THE CONSENT DECREE, WOULD TRY TO WIDDLE AWAY AT THAT, AND WOULD BE FREE TO DO SO.

SURE THEY HAVE TO PUBLISH A NOTICE, TWO MONTHS LATER AFTER FOLLOWING SOME KIND OF A PUBLIC HEARING THEY GO AHEAD TO DO WHAT THEY WANT TO DO ANYWAY. IF THEY HAVE PROBLEMS WITH THE DECREE, WE WILL AGREE TO REALISTIC CHANGES. THEY NEVER CAME TO US WITH A SUSPECT PROBLEM ABOUT IT.

THEY ARE CREATING THIS ALLUSION OF PROBLEMS IN AN EFFORT TO GET RID OF THE DECREE WHOLESALE, TO BE FREE FROM ITS OBLIGATIONS, TO BE FREE FROM THE BARGAIN THEY STRUCK. SOME CONSENT DECREES HAVE TIME LIMITS, PARTIES OFTEN NEGOTIATE TIME LIMITS. THE PARTIES HERE DID NOT NEGOTIATE A TIME LIMIT, THAT WAS PART OF THE BARGAIN TOO.

THE COURT: ALL RIGHT.

WELL, I KNOW WHAT THE PROBLEM IS. I HAD THIS ARGUMENT BECAUSE YOU ASKED FOR IT. I WANTED YOU TO HAVE THE OPPORTUNITY TO ARGUE IT.

I AM OF A MIND TO VACATE IT MAINLY BECAUSE IT SEEMS TO ME THAT THERE IS NOT NOW ANY REALISTIC PROBLEM FROM WHICH THE CONSENT DECREE PROTECTS ANYONE.

I MEAN, YOU ARE SAYING THAT IT IS THERE AND SO, THEREFORE THEY DON'T GO ANY FURTHER, BUT, IT SEEMS TO ME THAT YOU HAVE AS MUCH PROTECTION PURSUANT TO THE HUD REGULATIONS AS YOU DO PURSUANT TO THE CONSENT DECREE.

NOW, IF THAT WERE TO CHANGE, PRESUMABLY THEY WERE GOING TO MAKE SOME DRACONIAN CHANGE THAT THREATENED THE CONSTITUTIONAL RIGHTS OF YOUR CLIENTS AND THEY GAVE NOTICE OF THIS, I TAKE IT THAT THERE IS NOTHING TO PREVENT YOU FROM FILING A LAWSUIT.

MR. BROOKS: YOUR HONOR, WITH ALL DUE RESPECT, I HEAR WHAT YOU ARE SAYING BUT I'M CONCERNED THAT THE SORT OF BURDEN OF PROOF HERE IS PUT IN THE OPPOSITE DIRECTION FROM WHERE IT WOULD BE. THERE IS LANGUAGE IN THE RUFO CASE, YOUR HONOR, THAT DISCUSSES THE SIGNIFICANCE OF PROVISIONS IN CONSENT DECREES WHICH GO BEYOND WHAT THE CONSTITUTION REQUIRES.

AND RUFO ACTUALLY SAYS THAT THESE PROVISIONS ARE FINE, THEY ARE ACCEPTABLE, THEY ARE PART OF ANY BARGAIN. IT IS SOMETHING THAT PLAINTIFF CAN HOPE FOR AND SOMETIMES

ACHIEVE. THE FACT THAT WE WOULD—STILL OUR TENANTS WOULD BE PROTECTED BY THE REGULATIONS SIMPLY IS NOT A RELEVANT FACTOR IN DECIDING WHETHER TO VACATE THIS DECREE.

THE DECREE IS THE, AS RUFO PUTS IT, SHOULD BE—IT SHOULD BE RETAINED AS LONG AS IT HAS CONTINUING USEFULNESS AND VITALITY. TO JUST SAY, BECAUSE IT IS 22 YEARS OLD, THE TENANTS ARE NOW LEFT WITH THE HUD REGULATIONS IS PUTTING THE ENTIRE BURDEN OF SHOWING A BASIS FOR VACATING IT IN THE OPPOSITE DIRECTION.

WE HAVE TO SHOW SOME REASON WHY IT SHOULD BE CONTINUED TO BE NEEDED. WE ARTICULATED AT LEAST EIGHT WAYS THAT THIS DECREE PROVIDES EXTRA PROTECTIONS FOR OUR TENANTS. THERE IS NO SHOWING, WITHOUT ANY SHOWING BY PHA THEY SHOULD BE ABLE TO CHANGE THEIR POLICIES IN THAT REGARD.

WITH RESPECT TO WHAT PHA WOULD DO IF RELIEVED OF THEIR OBLIGATIONS, THEY SAID THEY WANTED TO CHANGE THEIR POLICIES IN WAYS TO BRING THEM CLOSER TO THE REGULATIONS, THAT WOULD BE FINE, EXCEPT THAT'S NOT WHAT THEY AGREED TO DO IN 1982, IN COMPLYING WITH REALISTIC—

THE COURT: DO YOU THINK IN 1982 THEY AGREED AND EXPRESSLY AGREED THAT THEY WOULD NEVER CHANGE THEIR POLICY WITHOUT YOUR APPROVAL.

MR. BROOKS: YOUR HONOR, I THINK THEY EXPRESSLY AGREED THAT THEY WOULD NOT CHANGE THESE PARTICULAR ASPECTS OF THEIR POLICY, YES.

REMEMBER THERE WERE PROPOSED HUD REGULATIONS ON THE TABLE FIVE MONTHS BEFORE THIS CONSENT DECREE WAS SIGNED. FIVE MONTHS BEFORE IT WAS STIPULATED, PROPOSED HUD REGULATIONS THAT WERE IN MANY RESPECTS SIMILAR TO THE FINAL HUD REGULATIONS. TO GO BACK TO THE 10 DAY HEARING NOTICE EXAMPLE THAT PHA HAS TO GIVE REASONABLE NOTICE AS THE REGULATIONS DO TODAY, WHAT'S REASONABLE IN SOME CONTEXTS, SEVEN DAYS OR EVEN FIVE DAYS ADVANCED NOTICE OF A HEARING HAVE BEEN HELD TO BE REASONABLE.

BUT, TO TAKE THE EXAMPLE GIVEN BY MS. FRENCH FOR A TENANT WORKING IN A LOW WAGE JOB, WHO CAN GET FIRED FOR TAKING TIME OFF FROM WORK, IT CAN MAKE A BIG DIFFERENCE IF THEY GET A 10 DAY, SEVEN DAY OR FIVE DAY NOTICE. IF YOU VACATE THIS DECREE, PHA SAYS, WELL, WE HAVE A LITTLE TROUBLE GETTING OUR HEARINGS LINED UP 10 DAYS IN ADVANCE, WE WILL MAKE IT SEVEN DAYS, IS THAT CONSTITUTIONAL? PROBABLY. IS IT PERMITTED BY HUD REGULATIONS? PROBABLY, YES. COULD WE FILE A LAWSUIT AND HOPE TO WIN 10 DAYS? WE WOULD HAVE A VERY HARD TIME.

THE COURT: IT IS PERMITTED ONLY IF REASONABLE, THEN THERE MAY BE A CIRCUMSTANCE UNDER WHICH IT WOULD BE REASONABLE TO HAVE A HEARING.

MR. BROOKS: I'M NOT SURE THAT I FOLLOW YOUR HONOR.

THE COURT: I SAY THERE MAY BE A CIRCUMSTANCE UNDER WHICH THERE WOULD BE A REASONABLE BASIS FOR GIVING LESS THAN 10 DAYS NOTICE.

MR. BROOKS: WELL, MAYBE IN AN EMERGENCY KIND OF BASIS. IF THERE IS A PROBLEM WITH THAT KIND OF THING, PHA NEVER ARTICULATED IT. IF THERE IS SUCH A REAL PROBLEM, THE APPROPRIATE REMEDY IS TO COME FORWARD TO ASK THIS COURT TO MODIFY THE CONSENT DECREE IN A PARTICULAR WAY. SO TO TRY TO IMAGINE AN EXAMPLE, MAYBE THEY HAVE SOLID INFORMATION THAT THERE'S SOMETHING VERY SERIOUSLY GOING WRONG AT A PARTICULAR TENANT'S HOUSE. AND THEY WANTED TO HAVE THIS HEARING AND GET IT OVER WITH ASAP. THEY PROPOSE SOMETHING, WE EITHER AGREE TO IT OR YOUR HONOR, IF WE DON'T AGREE WITH IT AND YOUR HONOR FEELS IT IS REASONABLE, YOU MODIFY THE DECREE ACCORDINGLY. THAT'S THE APPROPRIATE STANDARD HERE, IS THERE A PROBLEM? HOW DO YOU FIX THE PROBLEM? YOU DON'T SAY THE CONSENT DECREE IS 22 YEARS OLD AND YOU HAD A GOOD RUN. IT IS OVER NOW.

THAT'S BASICALLY SAYING THAT EVERY CONSENT DECREE DIES AFTER AWHILE, EVEN IF THAT IS NOT WHAT IT SAYS. THAT'S NOT WHAT RUFO SAID.

THE COURT: IF YOU HAVE CONFORMITY AND THERE ARE REGULATIONS WHICH WOULD APPEAR TO BE ABOUT AS PROTECTED AS THE CONSENT DECREE, MAYBE MORE SO, WHY DO YOU KEEP A CONSENT DECREE FOREVER?

MR. BROOKS: IF WE HAD THAT KIND OF REGULATION HERE, YOUR HONOR, WE WOULDN'T HAVE ANY PROBLEM WITH VACATING THIS CONSENT DECREE.

I CAN ONLY GO BACK TO THE FACT TO STATE—

THE COURT: THAT'S WHAT I'M ASKING YOU, WHAT IN THE REGULATIONS DO YOU FIND BURDENS YOU.

MR. BROOKS: IT IS NOT A QUESTION OF THE REGULATIONS BURDENING US. IT IS A QUESTION OF THE REGULATIONS NOT BEING AS PROTECTIVE AS THE CONSENT DECREE. TO START WITH, THE CONSENT DECREE, NOT THE REGULATIONS REQUIRES 30 DAYS ADVANCED WRITTEN NOTICE OF THE INTENT TO TERMINATE. NOW, THIS BECOMES AN IMPORTANT FACTOR BECAUSE REMEMBER SECTION 8 TENANTS HAVE LANDLORDS AND IT MEANS THAT THE TENANT HAS AT LEAST 30 DAYS TO TRY TO RESOLVE A PROBLEM WITH SECTION 8, PERHAPS OVER THE NUMBER OF INDIVIDUALS LIVING IN THE HOUSEHOLD. PERHAPS OVER THE AMOUNT OF THEIR INCOME. THE AMOUNT OF THE RENT THAT SHOULD BE CHARGED. THEY HAVE AT LEAST 30 DAYS TO TRY TO RESOLVE THAT PROBLEM, EXCUSE ME, THAT THEY HAVE, WITH SECTION 8, BEFORE THE MONEY TO THEIR LANDLORD IS CUT OFF. BECAUSE YOU BETTER BELIEVE, AS SOON AS THE MONEY IS CUT OFF TO THE LANDLORD, ON THE 31ST DAY, THAT LANDLORD HAS THE EVICTION NOTICE COMING.

NOW THE TENANT IS ON A VERY FAST TRACK TOWARD EVICTION. UNDER PENNSYLVANIA PROCEDURES, IT CAN OCCUR IN ABOUT 35 DAYS AFTER THE FILING OF A LANDLORD TENANT COMPLAINT UNTIL YOU ARE ON THE STREET, THAT'S ONE REASON THE 30 DAY PROVISION IS IMPORTANT.

WE ALREADY DISCUSSED THE 10 DAYS ADVANCED NOTICE OF THE HEARING.

THE CONSENT DECREE REQUIRES THAT THE NOTICE OF THE HEARING INFORM THE TENANT ABOUT HER RIGHT TO DISCOVERY OF DOCUMENTS, ABOUT HER RIGHT TO BE REPRESENTED. DISCOVERY OF DOCUMENTS, I DON'T HAVE TO TELL YOUR HONOR HOW IMPORTANT THAT IS.

SO, SURE, THE RIGHT IS THERE, IF THE TENANT DOESN'T KNOW ABOUT IT, IT WILL BE WORTHLESS TO HER.

MS. FRENCH: DISCOVERY OF DOCUMENTS IS NOT A RIGHT—

MR. BROOKS: THERE'S A DISTINCTION, THE REGS REQUIRE DISCOVERY OF DOCUMENTS, THEY DON'T REQUIRE A NOTICE OF A HEARING TELLING THE TENANT ABOUT THEIR RIGHTS. UNLESS THAT TENANT HAPPENS TO GET INTO CLS IN TIME, WE WILL NEVER KNOW ABOUT IT. IT IS A RIGHT THEY DON'T KNOW, IT IS USELESS TO THEM. ON THE FLIP SIDE, I HAVE TO SAY HOW BURDENSOME IS IT TO PUT THAT IN THE NOTICE? IT IS AN EXTRA SENTENCE, IF THAT. WHERE IS THE PROBLEM HERE.

BUT, THAT'S ANOTHER EXAMPLE OF AN IMPORTANT SUPPLEMENTAL PROVISION OF THIS CONSENT DECREE THAT WOULD BE LOST IF WE FELL BACK ON THE REGULATIONS.

THE COURT: WHY DON'T YOU PUT IT IN THE NOTICE?

MS. FRENCH: WE CERTAINLY WILL, YOUR HONOR.

MR. BROOKS: PRESENTLY, IT IS, YOUR HONOR.

IT IS IN THERE BECAUSE THE CONSENT DECREE REQUIRES IT. IF THE CONSENT DECREE—

THE COURT: I DON'T KNOW WHAT YOU MEAN.

YOU ARE SAYING IT IS IN THERE BY IMPLICATION BECAUSE—WHY IF IT IS EXPRESSLY IN THE REGULATIONS AND IT GOES IN THE NOTICE, HOW ARE YOU HURT.

MR. BROOKS: THE REGULATIONS DO NOT REQUIRE THEM TO STATE IN THE ADVANCED HEARING NOTICE THAT THE TENANT IS ENTITLED TO LOOK AT THE DOCUMENTS PHA WILL USE AGAINST HIM BEFORE THE HEARING.

SO, YES, IF THE TENANT GETS INTO OUR OFFICE AND WE TELL THEM, YES, YOU HAVE THE RIGHT TO LOOK AT THE DOCUMENTS, SOME POLICE REPORT FOR EXAMPLE OR SOME INCOME THEY SUPPOSEDLY FAILED TO VERIFY, SURE, IF THEY GET TO CLS, THEY KNOW ABOUT THE RIGHT, IT IS USABLE. MOST TENANTS DON'T GET TO US BEFORE THE HEARING, YOUR HONOR.

MS. FRENCH: YOUR HONOR, COUNSEL IS MISCHARACTERIZING THE REGULATIONS. THE REGULATIONS SAY THAT IF THE HOUSING AUTHORITY INTENDS TO USE ANY DOCUMENTS AT THE HEARING, THAT THEY HAVE TO SHOW THEM TO THE TENANT FIRST. IF THEY DON'T SHOW THEM TO THE TENANTS IN ADVANCE OF THE HEARING, THEY CAN'T USE THOSE DOCUMENTS AT THE HEARING.

SO, EVEN THOUGH THE WORDING, THE SEMANTICS OF THE REGULATION MAY BE DIFFERENT THAN IN THE CONSENT DECREE, THE PURPOSE IS THE SAME. WE HAVE TO SHOW THE DOCUMENTS TO THE TENANTS BEFORE THE HEARING UNDER THE REGULATIONS OR BE PRECLUDED FROM USING THEM, SIMILAR TO USING DOCUMENTS AT A TRIAL IN FEDERAL COURT.

MR. BROOKS: THE DIFFERENCE IS, YOUR HONOR, FIRST OF ALL THERE'S NOTHING IN THE REGULATIONS THAT PRECLUDES PHA FROM USING DOCUMENTS, IF THE TENANT DIDN'T REQUEST TO USE THEM IN ADVANCE.

SECONDLY, AS COUNSEL WELL KNOWS, THERE'S A DIFFERENCE OF SEEING A DOCUMENT AT THE TIME OF THE HEARING AND SEEING IT IN ADVANCE OF THE HEARING.

UNLESS THE NOTICE TELLS THEM YOU CAN SEE IT IN ADVANCE OF THE HEARING, THEY WILL NOT KNOW THAT.

THESE ARE NOT SOPHISTICATED LITIGANTS. THEY DON'T HAVE THE REGS. THAT'S WHY IT IS IN THE NOTICE AND IT IS IMPORTANT TO BE IN THE NOTICE.

THE COURT: IF THEY DIDN'T COME TO CLS. IF THEY COME TO CLS, THEY KNOW.

MR. BROOKS: THE CONSENT DECREE RELIEVED PHA OF THE SIMPLE OBLIGATION OF TELLING THEM 10 DAYS IN ADVANCE, YOU GOT A HEARING, BEFORE THE HEARING YOU CAN SEE THE DOCUMENTS.

MS. FRENCH: YOUR HONOR, WHAT COUNSEL HAS ILLUSTRATED, THAT ANY DIFFERENCE BETWEEN THE DECREE AND THE REGULATIONS ARE AT BEST MINOR.

IN FACT, THE DECREE ITSELF CONTAINS AN EXPRESS PARAGRAPH, THAT SAYS SHOULD THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROMULGATE REGULATIONS WHICH REQUIRE PHA TO PERFORM ACTS INCONSISTENT WITH THE STIPULATION OR WHICH

PROHIBIT PHA FROM PERFORMING ACTS CONSISTENT WITH THE STIPULATION SUCH REGULATIONS SHALL GOVERN.

SO THE CONSENT DECREE ITSELF SAYS, IF THE REGULATIONS ARE INCONSISTENT WITH THE DECREE, THE REGULATIONS PREVAIL. THAT'S WHAT WE ARE ASKING FOR THE COURT TO DO HERE TODAY.

THE CONSENT DECREE FURTHER SAYS: IN THE EVENT SUCH REGULATIONS ARE PROMULGATED, EITHER PARTY MAY FILE AN APPROPRIATE PETITION TO MODIFY THIS DECREE. AND VACATING IS A FORM OF MODIFICATION OF A DECREE AND 20 YEARS LATER WE ARE HERE. THAT'S WHAT WE ARE ASKING FOR, YOUR HONOR.

MR. BROOKS: YOUR HONOR, THESE PROVISIONS DO NOT CONFLICT WITH THE DECREE. THE REGULATIONS DO NOT PROHIBIT PHA FROM GIVING 10 DAYS NOTICE FOR EXAMPLE. THEY DON'T PROHIBIT PHA FROM DOING WHAT THE CONSENT DECREE REQUIRES, WHICH IS TO GIVE THE TENANT EXTRA NOTICE OF THESE IMPORTANT RIGHTS, LIKE THE RIGHT TO SEE DOCUMENTS.

IT IS IRONIC, PHA SHOULD TURN TO PARAGRAPH 13 TO TRY TO SUPPORT THEIR CASE BECAUSE IT UNDERMINES THEIR CASE.

PARAGRAPH 13 WAS OBVIOUSLY PUT IN THERE BECAUSE PHA, WHEN THEY WERE NEGOTIATING THE DECREE WAS AWARE THE REGULATIONS WERE COMING. THEY CHOSE TO SETTLE THIS CASE AND SETTLE IT IN A MANNER—

THE COURT: SUBJECT TO THE REGULATIONS.

MR. BROOKS: EXCUSE ME?

THE COURT: YOU SETTLED IT SUBJECT TO THE SUPREMACY OF THE REGULATION.

MR. BROOKS: CORRECT, YOUR HONOR. IF THERE WAS ANYTHING IN THE REGULATION WHICH FORBADE PHA FROM DOING IT, SOMETHING THAT THE CONSENT DECREE REQUIRES OR IF THERE WAS ANYTHING IN THE REGULATION THAT REQUIRED PHA TO DO SOMETHING THAT THE CONSENT DECREE DIDN'T REQUIRE, THEN THEY SHOULD FILE A MOTION BUT THERE'S NOTHING—THERE'S NO CONFLICT WHICH IS BETWEEN THE REGULATION AND THE CONSENT DECREE. THE CONSENT DECREE PROVIDES EXTRA PROTECTIONS. IT DOESN'T CONFLICT.

GETTING BACK TO THE EXTRA PROTECTIONS. I MEAN EVERY ONE OF THEM IS SIGNIFICANT. IN SOME CASES, FOR EXAMPLE, G ON PAGE 17, THE DECREE UNLIKE THE REGULATIONS REQUIRES THE HEARING DECISION BRIEFLY MENTION THE TENANT'S RIGHT TO APPEAL. AND CONSISTENT WITH THE CONSENT DECREE, THE DECISIONS THAT WE HAVE SEEN IN RECENT MONTHS AND RECENT YEARS DO THAT, THAT'S AN IMPORTANT RIGHT THAT THE TENANTS HAVE.

MANY TIMES THEY GO INTO THESE HEARINGS UNPREPARED FOR THE SERIOUSNESS OF THE SITUATION AND THE LEGAL COMPLEXITIES THAT CAN BE INVOLVED AND THEY DON'T REALIZE UNTIL AFTER THEY LOST THIS HEARING, THAT THEY REALLY SHOULD GET LEGAL HELP. PROBABLY HALF OF OUR SECTION 8 TERMINATION CASES COME TO US AFTER THE INITIAL HEARING WHEN THE TENANT SAYS, LOOK, I GOT THIS DECISION, IT SAYS HERE I CAN APPEAL. HOW DO I APPEAL?

SO, AGAIN, THE SIMPLE ADDITION OF A SENTENCE TO A HEARING DECISION PROVIDES AN IMPORTANT BENEFIT TO THE TENANTS AND THERE'S NOTHING IN THE HUD REGULATIONS THAT SAYS THERE'S ANYTHING WRONG ABOUT PUTTING IT IN THERE NOR DOES IT BURDEN PHA ANYTHING PUTTING SOMETHING IN A WORD PROCESSOR.

THE COURT: YOU SAY IT IS PUT IN THERE, YOU SAY BECAUSE OF THE DECREE.

MR. BROOKS: I KNOW OF NO OTHER REASON WHY IT WOULD BE PUT IN THERE. I DON'T KNOW WHY PHA WOULD BE FIGHTING SO HARD TO REMOVE, TO VACATE THE DECREE IF THEY DIDN'T WANT THE FREEDOM TO CHANGE THESE KINDS OF THINGS. THEY HAVE NOT POINTED TO ONE SINGLE PROBLEM THAT THIS DECREE CREATES.

THE COURT: ALL RIGHT.

LISTEN, I THINK I KNOW—I UNDERSTAND THE PROBLEM.

AND, I UNDERSTAND THAT, YOU KNOW, YOU ARE LOOKING AT IT FROM THE STANDPOINT THAT EVEN THOUGH NOTHING HAS HAPPENED UP TO NOW—WELL, NOTHING HAS HAPPENED THAT YOU CAN POINT TO, BUT YOU ASSUME THAT THINGS ARE GOING WELL BECAUSE OF THE DECREE, WHICH MAY OR MAY NOT BE THE CASE. YOU ARE TELLING ME THAT, BUT IT MAY OR MAY NOT BE THE CASE.

BUT, TO SAY IT IS DOING WELL, THEY ARE PROBABLY GOING WELL. THERE'S PROBABLY NOT A HECK OF A DIFFERENCE OF THE PHILOSOPHY OF PHA AND CLS RIGHT NOW. I CAN UNDERSTAND THAT THERE CAN BE BUT THERE PROBABLY ISN'T.

YOU ARE TELLING ME THAT. I UNDERSTAND THAT AND I UNDERSTAND YOUR FEAR THAT PHA WILL GO HOG WILD IF THERE IS NOT A DECREE THAT THEY THINK THEY CAN ENFORCE.

BY THE SAME TOKEN, IF IT IS REALLY A VIOLATION OF A RIGHT THAT SHOULD BE PROTECTED, THERE'S NO REASON WHY YOU CAN'T COME TO COURT TO GET PROTECTION.

MR. BROOKS: BUT, AGAIN, YOUR HONOR—

THE COURT: GET PROTECTION THAT WOULD PROHIBIT PHA FROM DOING IT IN THE FUTURE.

MR. BROOKS: A NUMBER OF THESE PROVISIONS OF THE DECREE GO BEYOND WHAT THE REGULATIONS REQUIRE. WE WOULD BE VERY HARD PRESSED TO WIN THEM AGAIN. THEY ARE VALUABLE. THEY DON'T CAUSE PHA ANY PROBLEMS. TO LOSE THEM FOR NO APPARENT REASON WOULD BE A MATTER OF GREAT CONCERN TO US, YOUR HONOR.

THE COURT: ALL RIGHT.

I UNDERSTAND THAT YOU MIGHT NOT WIN ON THE ISSUES THAT YOU GOT CONSENT TO INITIALLY.

I TOLD YOU THAT I PROBABLY AM LEANING TOWARD VACATING, BUT I HAVEN'T VACATED YET.

I WILL RECONSIDER CAREFULLY THE ARGUMENTS OF BOTH COUNSEL IN REGARD TO IT.

IN THE MEANTIME, THERE'S NO REASON WHY COUNSEL CAN'T COME TO SOME TYPE OF A RESOLUTION THEMSELVES. SOME OF THESE THINGS THAT YOU SAY DON'T NECESSARILY APPEAR, COULD APPEAR JUST AS EASILY AS NOT.

MR. BROOKS: YOUR HONOR, AGAIN, I DON'T KNOW WHAT THERE IS TO RESOLVE. I DON'T SEE PHA—

THE COURT: BECAUSE THERE NEVER WAS A PROBLEM. IF THERE WAS A PROBLEM, YOU WOULD HAVE BEEN HERE.

MR. BROOKS: EXCUSE ME.

THE COURT: SEE, CLS IS NOT BASHFUL ABOUT COMING TO COURT WHEN THERE IS A VIOLATION OF A CONSENT DECREE. THE REASON YOU HAVEN'T BEEN HERE, THERE IS NO SIGNIFICANT PROBLEM THAT I UNDERSTAND.

THERE ARE HYPOTHETICALS THAT YOU CAN CONJURE UP, THAT WOULD POSSIBLY BE A PROBLEM, BUT THERE HASN'T BEEN A PROBLEM.

MR. BROOKS: WE ARE NOT CONJURING HYPOTHETICALS, THEY ARE. I AM TRYING TO DESCRIBE AND CONTINUE IF IT IS FRUITFUL TO DESCRIBE REAL EVERYDAY SITUATIONS INVOLVING OUR CLIENTS, WHERE THESE RIGHTS ARE IMPORTANT.

THE RIGHT OF NOTICE TO APPEAL. THE RIGHT TO ADVANCED NOTICE OF THE RIGHT TO DISCOVER DOCUMENTS, TO THE RIGHT TO THE 10 DAYS NOTICE AS OPPOSED TO FIVE OR SEVEN DAYS NOTICE OF A HEARING DATE. EVERY ONE OF THESE IS IMPORTANT TO SIGNIFICANT NUMBERS OF OUR CLIENTS. AND, THESE ARE NOT HYPOTHETICAL PROBLEMS.

MS. FRENCH: WE ARE NOT DISAGREEING THAT THOSE ARE IMPORTANT THINGS TO YOUR CLIENTS. WE ARE SAYING—

MR. BROOKS: THEY ARE VALUABLE.

MS. FRENCH: PHA WILL ABIDE BY THE REGULATIONS.

MR. BROOKS: THEY ARE NOT IN THE REGS, YOUR HONOR. IF THEY ARE LEFT TO THE REGS, THEY WOULD BE FREE TO LEAVE THEM OUT. WE WOULD BE DELIGHTED TO WORK WITH STAFF COUNSEL AT PHA WHO ARE REASONABLE NOWADAYS. WE HAVE NOT ALWAYS ENJOYED THAT. WE WOULD HAVE NO ASSURANCE OF ENJOYING THAT IN THE FUTUR, WITHOUT THIS CONSENT DECREE.

THE COURT: YOU THINK—

MR. BROOKS: FRANKLY, IT HASN'T ALWAYS BEEN THAT WAY.

THE COURT: YOU THINK YOU BARGAINED FOR PERPETUAL PROTECTION FROM CHANGE OF PHILOSOPHY BY COUNSEL?

MR. BROOKS: I AM NOT SURE THAT THE ISSUES INVOLVED 10 DAYS NOTICE VERSUS SEVEN DAYS NOTICE VERSUS FIVE DAYS NOTICE ARE EVER CHANGING, YOUR HONOR.

IF ANYTHING, THE FACT THAT SO MANY MORE OF OUR CLIENTS ARE WORKING NOWADAYS, HAVE CHILDREN IN CHILD CARE, MAKES THE 10 DAY NOTICE BEFORE THE HEARING MORE IMPORTANT THAN EVER BEFORE.

TWENTY YEARS AGO, A VAST MAJORITY OF SECTION 8 PEOPLE WERE ON WELFARE. THEY COULD SHOW UP AT A HEARING WITH THEIR KIDS, IF NECESSARY, WITH FIVE DAYS NOTICE. NOW, MOST OF THESE PEOPLE—MANY, PROBABLY MOST ARE WORKING AT LEAST PART-TIME, HAVE KIDS IN CHILD CARE, THEY NEED THIS KIND OF NOTICE.

THESE ARE PERRENIAL ISSUES, YOUR HONOR. IN THE ABSENCE OF ANY REAL PROBLEM, I SEE NO REASON TO HAMSTRING THE PLAINTIFFS BY SAYING, WELL, YOU CAN ALWAYS BRING A LAWSUIT, BUT YOU PROBABLY WOULD HAVE A HARD TIME WINNING AND IN THE MEANTIME, YOU KNOW, THAT WAS THE BARGAIN, BUT YOU HAVE GOTTEN A GOOD RUN. IT IS ALL OVER NOW.

IF THAT WAS PART OF THE BARGAIN, THERE SHOULD BE A SUNSET IN THIS THING. IF THEY PROPOSED A SUNSET, WE MIGHT HAVE TAKEN IT. WE MIGHT HAVE NOT. WHO KNOWS WHAT WOULD HAPPEN BACK IN 1982 OR '3, PERHAPS YOUR HONOR.

CERTAINLY—

THE COURT: TWENTY-THREE YEARS AGO, IF THEY PROPOSED A SUNSET, YOU WOULD HAVE TAKEN IT?

MR. GOULD: IF I MAY YOUR HONOR, I AM GEORGE GOULD.

I WAS COUNSEL WHO NEGOTIATED THE SETTLEMENT IN THIS CASE MANY, MANY YEARS AGO.

AND, WE GAVE UP A FAIR AMOUNT. WE HAD A VERY GOOD DAMAGE CLAIM FOR DENYING TENANTS DUE PROCESS.

AT THE TIME THE—I SPECIFICALLY REMEMBER THE TIME THAT THE SETTLEMENT WAS ACCEPTED, THERE WERE PROPOSED REGS OUT THERE, FAIRLY GENERAL AND SOMEWHAT SIMILAR TO WHAT HUD CAME OUT WITH. THE FINAL REGS IN TURN FOR US GIVING UP VARIOUS CLAIMS, INCLUDING DAMAGES, WE NEGOTIATED AN AGREEMENT WITH PHA, WHICH PUT SOME MEAT ON THE SETTLEMENT.

BUT, MR. BROOKS HAD TALKED ABOUT SPECIFYING WHAT A REASONABLE NOTICE IS, TEN DAYS. TALKING ABOUT MAKING SURE THAT TENANTS KNEW OF THEIR RIGHTS. THE RIGHT TO DISCOVERY. THE RIGHT TO APPEAL AND THINGS LIKE THAT.

AND, I GUESS WHAT CONCERNS US IN THE FUTURE, THAT IF WE SEE THAT WE WILL ENTER INTO SETTLEMENTS WITH PHA, THEN FIVE, 10, 15, 20 YEARS LATER THEY WILL DISAPPEAR, WE WILL BE RELUCTANT TO DO SETTLEMENTS SIMPLY BECAUSE WE KNOW WE ARE GIVING THINGS UP.

THE COURT: YOU WILL NEVER GET A SETTLEMENT, IF YOU TELL SOMEONE THEY ARE BINDING ALL ADMINISTRATIONS FOREVER.

MR. GOULD: THE POINT IS—

THE COURT: BASICALLY PEOPLE THAT ARE THEN TALKING TO YOU ABOUT SETTLEMENT, THEY ARE THINKING ABOUT REASONABLE TIMES. I THINK YOU WERE TOO AT THAT TIME. IF ANYBODY HAD TOLD YOU THAT YOU WOULD BE IN COURT NOW 20 SOME YEARS LATER ARGUING THIS QUESTION, YOU WOULD HAVE—

MR. GOULD: I THINK THE SETTLEMENT, THE WAY THAT IT WAS SET UP, AND OUR EXPERIENCE WITH SETTLEMENTS; YES, ADMINISTRATIONS CHANGE. AND, YES, PROCESSES CHANGE. YES, PROBLEMS CHANGE.

I THINK OUR POINT IS THAT IN THIS PARTICULAR CASE, IF PHA HAS PARTICULAR PROBLEMS WITH THE SETTLEMENT, THEY CLEARLY ARE FREE TO COME TO US; IF WE CAN'T AGREE, COME TO COURT, THIS IS NOT RIGHT ANYMORE, THIS SETTLEMENT LOST

ITS VITALITY IN THIS PARTICULAR AREA. WE NEED TO CHANGE IT. TIMES HAVE CHANGED, BUT THAT'S NOT WHAT THEY ARE DOING. THEY WANT TO THROW OUT EVERYTHING.

WE AGREE THAT A SETTLEMENT ENTERED 20, 25 YEARS AGO MAY NEED CHANGE. IT MAY NEED TO BE TWEAKED. SOMETHINGS MAY NEED TO BE CHANGED. THE SECTION 8 PROGRAM MAY CHANGE, A LOT OF THINGS MAY CHANGE.

THERE'S A WHOLE PROCESS IN MANY OF OUR OTHER CASES, WE DO A LOT OF CASES—

THE COURT: THE WHOLE STATUS OF YOUR SECTION 8 TENANTS HAVE CHANGED.

MR. GOULD: EXCUSE ME?

THE COURT: THE ARGUMENTS, I HEARD, THE WHOLE STATUS OF YOUR SECTION 8 TENANTS HAVE CHANGED FROM THOSE THAT WERE ALMOST ALL ON PUBLIC ASSISTANCE TO THOSE THAT ARE NOW EMPLOYED.

MR. GOULD: MANY MORE ARE EMPLOYED.

THE COURT: THINGS DO CHANGE. I COULDN'T IMAGINE YOUR HAVING GOTTEN AN AGREEMENT, IF YOU TRIED TO EXPRESSLY PUT IN THERE, FOREVER.

MR. GOULD: THE POINT IS THAT THERE ARE DUE PROCESS REQUIREMENTS THAT ARE NEEDED.

THE COURT: THE DUE PROCESS REQUIREMENTS WILL BE THERE, WHETHER YOU GET THE CONSENT DECREE OR NOT.

MR. GOULD: THAT IS CORRECT. WHAT WE GAVE UP AT THE TIME OF THE SETTLEMENT, WE THINK IT IS VERY IMPORTANT IS VARIOUS THINGS THAT WE

COULD HAVE SUED PHA AND GOT—GAVE THEM UP IN RETURN FOR KNOWING WE HAD THE ADDED PROTECTIONS THAT TENANTS WILL BE PROTECTED AS MR. BROOKS SAID.

OUR CONCERN NOW IS THAT AFTER MANY YEARS, AFTER PHA AND WE HAVE HAD PROBLEMS, I THINK IT IS VERY IMPORTANT FOR THE COURT, THAT WE HAVE HAD PROBLEMS IN INDIVIDUAL CASES. GENERALLY WHAT WE DO IS WORK IT OUT WITH PHA. IF THE TENANT DOESN'T GET THE PROPER NOTICE OR IF THE SECTION 8 OFFICE DOES SOMETHING IMPROPERLY, WE WILL WORK IT OUT. OUR FIRST STEP IS NOT TO GO TO THE OFFICE—NOT TO GO RIGHT TO COURT.

INRONICALLY IN THIS CASE, PHA NEVER CAME TO US. THEY WENT RIGHT TO COURT. WE NEVER HAD A LETTER, NEVER GOT ANYTHING SAYING, YOU KNOW, WE ARE OPERATING UNDER THE SECTION 8 PROGRAM. WE ARE HAVING THE FOLLOWING PROBLEMS. THE ONLY THING THAT WE EVER GOT WAS A MOTION TO VACATE THE DECREE.

WE THINK THAT IF PHA HAS PROBLEMS, WHAT THEY NEED TO DO IS SPECIFY WHAT THE PROBLEMS ARE WITH THE DECREE, WHY THEY ARE NOT MANAGEABLE, WHY THEY ARE NOT WORKABLE AND NEGOTIATE WITH US AND IF WE CAN'T, PRESENT THAT TO THE COURT. THEY HAVEN'T PRESENTED ANYTHING, WHICH SAYS THAT THIS DECREE IS NOT WORKABLE.

MS. FRENCH: YOUR HONOR, IF I MAY, THERE IS SOMETHING, I TRIED HARD NOT TO INTERRUPT.

THE COURT: YOU CERTAINLY MAY.

MS. FRENCH: WHAT COMMUNITY LEGAL SERVICES IS SUGGESTING THAT A DEAL IS A DEAL. A CONSENT DECREE, IT SHOULD GO ON FOREVER—

THE COURT: NO. IT SUGGESTS THAT IT BARGAINED FOR THESE.

MS. FRENCH: CORRECT.

THE COURT: IT GAVE UP SOMETHING IN RETURN FOR ANTICIPATING THAT IT WAS GOING ON AT LEAST FOR AN INDEFINITE PERIOD IN THE FUTURE.

MS. FRENCH: CORRECT. WHAT IN FACT THEY BARGAINED FOR, IF REGULATIONS WERE ENACTED, THOSE REGULATIONS WOULD CONTROL. THAT'S EXPRESSLY SET FORTH IN PARAGRAPH 13 OF THE DECREE ITSELF.

MOREOVER, WHAT THEY ARE ARGUING, IS THAT INSTITUTIONAL REFORM—CONSENT DECREES SHOULD GO ON FOREVER. THAT'S DIRECTLY CONTRARY TO WHAT THE UNITED STATES SUPREME COURT SAID IN THE FREW CASE LAST YEAR AND THE THIRD CIRCUIT SAID IN HARRIS VERSUS CITY OF PHILADELPHIA AND IN OTHER CASES. ONCE THE PROBLEM IS FIXED, CONTROL AND DECISION-MAKING SHOULD BE RETURNED TO THE STATE OFFICIALS IN CHARGE OF THE AGENCY IN QUESTION.

HERE, THEY CONCEDED THAT THERE REALLY HAVEN'T BEEN ANY PROBLEMS IN THE LAST 20 YEARS. THEY HAVE NOT FILED ANY MOTIONS. THE PROBLEM THAT WAS INITIALLY SOUGHT TO BE CURED BY THIS CONSENT DECREE WAS IN FACT CURED AT THE TIME IT WAS ENTERED INTO. THERE WERE NO REGULATIONS THAT HAD BINDING LEGAL EFFECT A YEAR AND A HALF LATER. HUD

PUBLISHED THOSE REGULATIONS AND THEY TOOK EFFECT, AND FOR A YEAR AND A HALF WHERE THERE WERE NO REGULATIONS, THIS CONSENT DECREE CONTROLLED.

SINCE THEN, THE CONSENT DECREE HAS REMAINED IN EFFECT BUT THE DECREE ITSELF PROVIDES THAT IF REGS ARE ENACTED, THE REGS SHOULD CONTROL. THAT'S WHAT WE ARE ASKING FOR.

THIS COURT AND THIS INSTITUTIONAL REFORM LITIGATION AGAINST PHA, BECAUSE THERE'S NO LONGER ANY NEED FOR IT, IT HAS BEEN A SIGNIFICANT CHANGE.

THE COURT: IF YOU HAVE REGS THAT SAY REASONABLE NOTICE?

MS. FRENCH: THAT IS CORRECT.

THE COURT: THE CONSENT DECREE THAT SAYS 10 DAYS NOTICE, DOES THAT MEAN THAT THE 10 DAYS IS GOOD MINIMUM NOTICE?

MS. FRENCH: WELL, IT SEEMS TO ME THAT SINCE THIS COURT HELD THAT 10 DAYS IS REASONABLE NOTICE, IT WOULD BE WISE FOR PHA TO CONTINUE TO GIVE 10 DAYS, IT HAS THE LEGAL IMPRIMATUR OF REASONABLE NOTICE. REASONABLE IS THE TERM USED UNDER THE REGULATIONS.

MR. BROOKS: YOUR HONOR, I DON'T WANT TO INTERRUPT THE COLLOQUY. IF I CAN MAKE A COUPLE OF POINTS.

WITH RESPECT TO FRU, I'LL READ THE LAST TWO SENTENCES OF THE COURT'S OPINION. IF THE STATE ESTABLISHES REASON TO MODIFY THE DECREE, THIS IS THE FRU CASE, INSTITUTIONAL

REFORM, THE COURT SHOULD MAKE THE NECESSARY CHANGES.

THE COURT: THEY SAY IF THEY HAVE NOT, YOU ANTICIPATED IN THE ADOPTION OF REGULATIONS, THAT THE REGULATIONS WOULD CONTROL.

IF THE REGULATIONS CONTROL, THERE'S NO REASON TO CONTINUE THE CONSENT DECREE.

MR. BROOKS: I DON'T THINK WITH ALL DUE RESPECT, I DON'T THINK THAT'S WHAT THE FREW COURT WAS TALKING ABOUT.

THE COURT: I THINK THAT'S THE ARGUMENT. I THINK. IF THE REGULATIONS CONTROL, THERE'S NO REASON TO CONTINUE THE CONSENT DECREE UNLESS THERE IS SOMETHING IN THE CONSENT DECREE WHICH IS PERHAPS WIDELY AT VARIANCE WITH THE REGULATIONS, WHICH CONCEIVABLY THERE COULD BE. BUT, YOU KNOW, I AM TRYING TO UNDERSTAND WHAT IT IS.

MR. BROOKS: YOUR HONOR, THE FRU COURT HELD THE STANDARD IS THAT THE STATE OR IN THIS CASE PHA MUST ESTABLISH SOME REASON TO MODIFY THE DECREE, SHOW SOME PROBLEM WITH THE DECREE.

THE COURT: THEY ARE NOT MODIFYING. THEY WANT TO VACATE IT BECAUSE THERE ARE REGULATIONS WHICH NOW CONTROL.

MR. BROOKS: BUT, THE POINT I AM TRYING TO—

THE COURT: THEY ARE NOT ASKING TO CHANGE THE 10 DAYS TO EIGHT DAYS. THEY ARE NOT ASKING TO CHANGE ANY PROVISION IN THERE TO SOMETHING LESS THAN WHAT HAS BEEN THE PRACTICE. THEY ARE NOW SAYING WE HAVE REGULATIONS NOW WHICH CONTROL ANYWAY,

PURSUANT TO THE DECREE. LET US CONTINUE WITH THOSE REGULATIONS WITHOUT THE DECREE.

MR. BROOKS: YOUR HONOR, THE REGULATIONS SIMPLY DO NOT CONTAIN THE RIGHTS THAT I HAVE LISTED IN PAGES 16 TO 18. WE ARE–IN TERMS OF THE OVERALL TEST HERE, I'LL TURN TO A CASE THAT INVOLVED ANOTHER OLD CONSENT DECREE, ONE WE LOST, THE BROWN DECREE. I FIND IT IRONIC THAT PHA TRIES TO RELY ON THIS BECAUSE THE THIRD CIRCUIT AND I QUOTE THIS AT PAGE 15 OF OUR REPLY, OUR ANSWER, SPEAKING OF THE BROWN DECREE IN THE REGULATIONS: OUR REVIEW OF THE FEDERAL STATUTE AND REGULATIONS PROMULGATED AFTER THE CONSENT DECREE WAS ENTERED REVEALS THAT NOT ONLY DID THEY SIGNIFICANTLY CHANGE THE RELEVANT DUE PROCESS LANDSCAPE (ORIGINALLY SOUGHT TO BE CURED BY THE CONSENT DECREE) BUT THAT THEY GAVE BROADER AND MORE COMPREHENSIVE PROTECTION TO THE PUTATIVE CLASS MEMBERS THAN HAD BEEN AVAILABLE UNDER THE DECREE. THUS, THE BROWN DECREE NO LONGER HAD FORCE OR UTILITY, AND THERE WAS NO REASON FOR IT TO REMAIN OPERATIVE.

THE TEST HERE, DO THE REGULATIONS COVER THE SAME AREA, ARE THEY BETTER THAN THE DECREE? DOES THE DECREE CONTINUE TO OFFER SOMETHING THAT THE REGS DO NOT?

HERE CLEARLY THIS DECREE OFFERS A NUMBER OF THINGS WHICH ARE BETTER FOR THE TENANTS. IT HAS—

THE COURT: IF THEY HAVE 10 DAYS AS THE MINIMUM RATHER THAN THE REQUIRED NOTICE STANDARD, THEY WOULD HAVE IMPROVED UPON THE NOTICE, WOULD THEY NOT?

MR. BROOKS: YOUR HONOR, I FAIL TO UNDERSTAND WHY THAT IS EVEN A RELEVANT ISSUE BECAUSE IF PHA DIDN'T WANT TO CHANGE SOME OF THESE THINGS, WHY IN THE WORLD WOULD THEY BE IN HERE TO ASK TO VACATE THE DECREE.

MORE PARTICULARLY, WHY WOULDN'T THEY HAVE SIMPLY COME TO US.

THE COURT: FOR THE SAME REASON EVERYTHING HAPPENS, YOU GET INQUIRIES FROM ADMINISTRATIVE OFFICES OR FROM HUD AND SO FORTH, THEY WANT TO KNOW WHAT'S THE VITALITY OF THIS PARTICULAR MATTER, WHICH HAS BEEN ON YOUR DOCKET SINCE 1900 AND YOU THEN LOOK AT IT AND SAY, THERE'S NO VITALITY TO IT. LET ME GET RID OF IT.

I UNDERSTAND THAT PROBLEM.

MR. BROOKS: BUT, THE FIRST PART—EXCUSE ME. THE FIRST PART OF THAT IS NOT TRUE. THERE IS VITALITY TO IT. THAT'S EXACTLY WHY THEY WANT TO GET RID OF IT.

THE COURT: I UNDERSTAND THAT'S YOUR ARGUMENT, THAT THERE IS VITALITY TO IT. I'LL LOOK AT IT AGAIN.

MR. BROOKS: I FAIL TO SEE WHY AN AGENCY WOULD BE SEEKING TO GET RID OF A DECREE, IF IT INTENDS TO CONTINUE DOING EVERYTHING THAT THE DECREE REQUIRES ANYWAY. IT MAKES NO SENSE.

THE COURT: I TAKE IT, CLS GETS RID OF A LOT OF OPERATING PROCEDURES AND SO FORTH THAT HAVE NO VITALITY.

MR. BROOKS: THIS ONE HAS VITALITY.

THE COURT: IF THEY HAVE MONEY TO HIRE SOMEONE WITH EXPERTISE IN THAT REGARD REFORMING THE PROBLEMS, THEY GO ABOUT REFORMING THE PROCESS.

I MEAN THE QUESTION IS WHETHER IT CONTINUES TO HAVE SOME REASON TO HAVE VITALITY.

MR. BROOKS: EXACTLY.

THE COURT: WHETHER THAT IS SO OR NOT, I'LL LOOK AT IT AGAIN.

MR. BROOKS: THANK YOU, VERY MUCH, YOUR HONOR.

MS. FRENCH: THANK YOU, YOUR HONOR.

MR. GOULD: THANK YOU, YOUR HONOR.

THE COURT: WE ARE IN RECESS.

(HEARING ADJOURNED AT 12:10 P.M.)

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